XIV
100

The code of criminal procedure

(Act XXV of 1861)

Year: 1862

Sub: Legislation/ code of criminal procedure

Place: Calcutta

had absconded or concealed himself, or that the legal formalities of the proclamation had been duly observed, and that in the absence of such evidence the forfeiture was illegal.—Muddoosoodun Singh, 9 W. R., 27.

Note to page 115—

A charge for intentionally giving false evidence would show on the face of it the particular matter in respect of which that charge is made. If contradictory statements are charged, they should be formed into separate heads, and would not be charged in one and the same head. A charge is not properly drawn up which merely sets out two long depositions in same respects contradictory, leaving the person charged to find out for himself in respect of what particular contradiction it is said that he committed the offence.—Soonder Mahoree, 9 W. R., 25.

Persons composing opposite parties in a riot should not only be charged separately, but should be committed for trial in separate cases, each party forming one case.—Sheikh Bazu, 8 W. R., 47; Durzoollah Khan, 9 W. R., 33.

Note to page 120—

Where a Sessions Judge, under S. 435, ordered the commitment of a person on a charge under S. 304, Penal Code, (culpable homicide not amounting to murder) for an offence triable exclusively by the Court of Session, for which alone such an order could be passed, and on trial amended the charge to one under S. 154, Penal Code, for an offence triable by a Magistrate, and convicted under it, the Agra High Court, though disapproving of these proceedings, would not set them aside as illegal.—Thakoor Dass, 1 Agra High Court, 13.

Note to page 157—

The object of S. 318 is to preserve the peace of the public and not to right wrong. If at the time of the application to the Magistrate, a wrong-doer is in possession, it is the duty of that officer, without reference to the merits of the case, to declare him entitled to possession until ousted in discourse of law.—Gholam Mohommed, 1 Agra High Court, 33.

As note to page 158—

The grant of a certificate under Act XXVII. of 1860, to collect debts due to the estate of a deceased person, is no ground for giving a party possession in supercession of an order under S. 319.—Obilashery Dossee, 9 W. R., 18.

As note to page 180—

There should be some evidence of the state of the deceased person at the time of his making the declaration.—Kulika Misser, 1 Agra High Court, 3.

As note to page 183.

It is the duty of a Judge to sum up the evidence on both orders, and place it before the Jury for their verdict, and not merely to give his own opinion on it. Where such had been done, the Calcutta High Court held that there had been practically no summing up, and ordered a new trial.—Shumshere Beg, 9 W. R., 51.

As note to page 199—

But where a commitment is made in accordance with Cir. 7, 1867, of the Calcutta High Court, it is indispensable that a formal charge should be drawn up by the committing Magistrate, and that the prisoner should be tried by the Sessions Judge on a charge. A trial held without any such charge was held to be illegal.—Ram Rutten Dass, 9 W. R., 21.

As note to page —

Add the case of Puran Telee *vs.* Bhuttoo Dome, 9 W. R., 5, to the cases quoted in the 2nd para. of the note to S. 404. Where the Sessions Judge, in placing the case before the Jury, had not left it to them to form an opinion on the evidence but had merely expressed his own opinion as to what was proved against the prisoners, it was held that there had been no summing up of the evidence, and a new trial was ordered.—Shumshere Beg, 9 W. R., 51.

As note to page 222—

An Appellate Court can only alter or reverse the finding and sentence or order of the Lower Court. If it should be of opinion that there should be an order for re-trial on account of any illegality or irregularity in the proceedings, it should refer the matter to the High Court under S. 434.—Hoolassee Singh, 1 Agra High Court, 17.

As note to page 228—

The prisoner was charged in one head of the charge with having committed three distinct acts of having intentionally given false evidence. The Judge found him guilty without specifying any one of these acts. The High Court held that the prisoner had not had a fair and proper trial, and that he had been prejudiced by the defective manner in which the case had been conducted. The conviction was accordingly set aside.—Foujdar Roy, 9 W. R., 14.

As note to page 232—

The offence complained of and proved being one beyond the jurisdiction of the Magistrate, he was held to have improperly convicted of a lesser offence instead of committing the case for trial by the Court of Session. The conviction was accordingly reversed as illegal, and he was ordered to proceed in accordance with law.—Puran Telee *vs.* Bhutto Dome, 9 W. R., 5.

As note to page 233—

Where a Sessions Judge under S. 435 ordered the commitment of a person under a charge of an offence triable exclusively by the Court of Session, but on trial altered the charge to one for an offence triable by a Magistrate and convicted thereon, his proceedings, though disapproved of, were held not to have been contrary to law.—Thakoor Doss, 1 Agra High Court, 13.

As note to pages 322, 323—

As to the passing of a sentence of whipping on a person convicted at one time of several offences for which under S. 46, Code of Criminal Procedure, he could be liable to several sentences, see judgment of the Calcutta High Court, in the case of Nasir *vs.* Chunder and others, 9 W. R., 41, quoted in the foregoing as a note to page 21.

An Appellate Court cannot set aside a sentence passed by a Magistrate, and order the convict to be whipped.—4 W. R., 12 C. L.

To the last para. of the note to S. 2, add, see case of Yallavallad Parshia, 3 Bombay, 37—*Crown Cases.*

As note to Ss. 3 *and* 4—

The offence must have been committed after a conviction of the same offence to legalize the passing of a sentence of whipping under Ss. 3 and 4.—Sarya Bin Krishna Mandakar, 3 Bombay, 37—*Crown Cases.*

A Magistrate should not transfer to the Jail of another District a convict who has been sentenced to imprisonment *and* whipping until the latter sentence has been executed, annulled, or commuted.—Agra Sudder Court, Cir. 9, 1865.

As note to page 325, *S.* 11—

A Medical Officer, during execution of a sentence of whipping, certified that the accused was not in a fit state to undergo the remainder of the sentence, which was accordingly stayed, and the prisoner who had been sentenced only to whipping was discharged by the Magistrate. On a reference to it, the Calcutta High Court approved of the Magistrate's proceedings.—3 Wyman 3, *Letters.*

Appeals in Criminal trials include such appeals under Section 409, Code of Criminal Procedure, and also under Section 410. Appeals in other cases include appeals against orders to give security for good behaviour, and any appeals allowed by law against orders not being convictions in Criminal trials. Applications and requisitions under Section 434 have been entered under a separate head, because it has been thought expedient that the extent to which this provision of the law has been resorted to should be recorded, whether the Court of Session has acted on application or of its own motion. Such application when made by petition to the Court and refused, will be entered in the same column as appeals rejected. When the record has been called for, but the proceedings have not been referred for the orders of the High Court, the case will be entered with orders affirmed. When such reference has been made, the case will appear under " orders reversed."

III, IV, and V, will be submitted within a week after the close of each Sessions. Nos. IV and V are the same as the present returns bearing those numbers.

III, IV, and V.—Jail Delivery Statements.

No. III is designed to exhibit the results of one Sessions at a single view. In it will be shown the cases of all accused persons who were in Jail or on bail at the commencement of the Sessions, awaiting trial before the Court of Session, and the mode in which each case and person was disposed of.

In the form which accompanies this C. O.

The High Court has reason to believe that trials are sometimes too lightly postponed. It cannot be too often pointed out that a further detention of an accused person in Jail for perhaps two months is in itself no trivial infliction, and is only justified when there is apparently a good case against the prisoners, and when the Judge is satisfied that, for the ends of justice, it is necessary to postpone the trial.

The High Court, therefore, directs that at each periodical Session all persons awaiting trial be brought before the Judge in open Court, and if the Government Prosecutor should not be prepared to go to trial in any particular case, that he should be required to show cause properly supported why the accused should not be acquitted and released, the accused himself being also heard in answer to such cause shown. When any trial is postponed, the ground of postponement is to be shortly stated in the column of "remarks" in Statement No. III.

Offences are to be stated as concisely as possible, with the Section of Indian Penal Code (or other law) applicable, in the form given.

When solitary confinement is awarded, the fact (specifying the period) is to be stated in red ink in the column of remarks opposite the name of the prisoner so sentenced.

A sentence passed in addition to any other sentence in a different case passed at the same Sessions, or one which is to take effect on the expiration of another sentence, which the prisoner may be undergoing, is to be similarly indicated.

Cases will be entered in the order of trial, so as to enable the Judge's Clerk to place each case in the statement at the conclusion of the trial.

The smaller form given on the reverse side of this statement is intended to show the number of witnesses and others who have come before the Court at each Sessions and the time occupied in disposing of the cases collectively.

Part II.

The existing rule, under which in all districts the Sessions are to be held in each alternate month, is abrogated, and the number of Sessions and the time of holding them will now be left to the discretion of each Sessions Judge to be determined according to the varying circumstances of his district and the state of business therein.

The Judge will accordingly in the first week of December in each year fix the number of Sessions to be held in the year following, and the dates on which respectively they are to begin (the number varying with the estimated or average number of trials and not being less than six or more than ten in each year), and the Magistrate of the District, in communication with all the Subordinate Magistrates who exercise the power of committing to the Sessions, and obtaining from them the particulars of all cases committed by them, will prepare and submit to the Zillah Judge, two days before the commencement of each Sessions, a Calendar of all such cases in the form annexed, which will be the basis of the Sessions Judge's Calendar. (Statement No. III.)

The document now misnamed a Calendar will be discontinued, and the names of the witnesses should be placed on the back of the charge sheet. The observations or judgment of the Magistrate in committing the prisoner will always go up in original with the record, where, with the original depositions, they should be read by the Judge before the trial. Abstracts of the evidence are considered unnecessary, and they are at times misleading.

The Magistrates will be be careful to arrange their commitments with a view to the trials taking place at the earliest or next ensuing Sessions, in order to avoid the needless detention of accused persons for prolonged periods.

Whenever a commitment is made, intimation will be immediately given to the Court of Session, through the Magistrate of the District, by a letter in the annexed form. It will be unnecessary for the Court of Session to send any answer fixing a date for the trial. But the Judge will be guided by the information which he thus receives in estimating the time which it will be necessary to devote to the Criminal Sessions, and consequently at what period he will be able to take up the Civil business thereafter.

Prosecutors and witnesses will be bound over to appear "at the next Criminal Sessions commencing on . ."

But it will be the duty of the Magistrate, in order to prevent hardship and unnecessary detention to such persons, so to arrange the coming on of cases before the Court of Session that such parties may not be brought from their homes to the Sudder Station, before they are actually required, and that they should have written notice of the specific date on which their attendance will be necessary, and it should be carefully explained that failure to attend will be severely dealt with.

The directions herein contained for committing Magistrates are to be observed so far as they are applicable by Civil Courts and other authorities committing persons for trial at the Sessions.

The rules now communicated will take effect from the 1st July next, and the Zillah Judges will be good enough to fix the Sessions for the latter half of the year in the first week of June. All such arrangements for the Sessions (both on the present occasion and afterwards, yearly) are to be

reported to to this Court for approval, may be carried out unless the disapproval of the Court be communicated.

Form of letter to be sent by Committing Officers through the Magistrate of the District to the Judge.

FROM

Magistrate of

To

THE SESSIONS JUDGE OF

SIR,

I beg to report that I have this day committed to take his trial before the Court of Sessions the person named in the margin on the charge specified below.

I have, &c.,

A. B.,

Magistrate (as the case may be).

Charges.

1

2

(Form of District Magistrate's Calendar).

Calendar of accused persons for trial before the Court of Session.

SESSIONS OF 186.

No. of case.	Committing Officer.	No and Name of accused.	Charges and Section I.P.C	Date offence.	Date of apprehension or appearance to summons	Date of commitment.	In Jail or on Bail

Sessions Statement No. I.—*(Quarterly).*

*Abstract of Business before the Court of Session of the District of*_____
in its Appellate Jurisdiction for the———Quarter of 186 .

Nature of business.	Pending on	Instituted during the quarter of	Total to be disposed of.	Total disposed of	Pending on the of	Remarks.
Appeals in Criminal trials ...						
Appeals in other cases ...						
Applications under Section 434, C. C. P. ...						
Other applications ...						

Sessions Statement No. II.—*(Quarterly).*

*Result of appeals and applications with reference to the several Magistrates in the District of*_____
for the———Quarter of 186 .

Names of Magistrate, &c.	Pending at close of last quarter.	Instituted during the quarter.	Total to be disposed of.	Appeals rejected under Section 417, C. C. Pro., and petitions refused.	Decisions confirmed on appeal, and applications not reported.	Reversed, modified, or reported to the High Court.	Total disposed of.	Total pending at end of quarter.	Remarks.
Mr.									
Appeals in criminal trials									
Appeal in other cases.									
Applications under Section 434, C. C. P. ...									
Mr.									
Appeals in criminal trials									
Appeals in other cases.									
Applications under Section 434, C. C. P. ...									
Mr.									
Appeals in criminal trials									
Appeals in other cases.									
Applications under Section 434, C. C. P. ...									
Mr.									
Appeals in criminal trials									
Appeals in other cases.									
Applications under Section 434, C. C. P. ...									
Mr.									
Appeals in criminal trials									
Appeals in other cases.									
Applications under Section 434, C. C. P. ...									
Mr.									
Appeals in criminal trials									
Appeals in other cases.									
Applications under Section 434, C. C. P. ...									

Sessions Statement No. III.—*(To be submitted after each Sessions).*

CALENDAR of accused persons committed or remaining for trial before the Court of Session of the District of at the Jail Delivery held in the Month of 186 .

No. of Case.	Date of Commitment.	Name of Committing Magistrate.	Names and number of accused.	Nature of offence.	Disposal of the accused.	Date of Order.	REMARKS.
1	8th Dec. 1867.	J Smith, Esq., *Subordinate Magistrate of the first Class, with power to commit to the Sessions.* ..	1. Jeswant Singh ..	Dacoity, 395 P. C. ..	7 years' rigorous imprisonment..		
			2. Halwan Khan ..		10 years' rigorous transportation		
			3. Hasen Khan ..		Acquitted ..		
			4. Kanie Khan ..		5 years' rigorous imprisonment..		
			5. Nubbee Haree ..		3 years' rigorous imprisonment..		3 months' solitary confinement.
2	10th „ „	Baboo ..	6. Sreenath Dass ..	False evidence, S. 193 ..	Acquitted ..		
3	15th „ „	Mulvi ..	7. Kallee Mohun ..	Murder, S. 302 P. C. ..	Trial postponed under S. 389, C. C. P. ..		On proof that the prisoner was incapable from unsoundness of mind of making a defence.
4	23rd „ „	C. D. French, Esq., *Assist, with full powers of a Magistrate*	8. Romesh Chunder Mitter ..	Taking a gratification, S. 161 P. C. ..	Remanded on bail to next Sessions on the motion of the Government Vakeel ..		The Court being satisfied that the witnesses for the prosecution are not forthcoming, and that the ends of justice would be answered by the order made.
5	24th „ „	A. P. Wall, Esq., *Magistrate of the District* ..	9. Waris Ali ..	Murder, S. 302 ..	Death ..		Reported for confirmation to the High Court.
6	29th „ „	Ditto ditto ..	10. Ram Dass ..	Attempt to murder, S. 307 ..	Acquitted ; Insanity ..		Detained pending orders of Government.
7	30th „ „	J. Wood, Esq., *Joint Magistrate.*	Kisto Kishur Roy .. / Nobocoomar Sen ..	Forgery of Will, S. 467.	Adjourned till 10th proximo ..		For the attendance of a material witness resident at Lahore.

Part II.

Abstract of Business at the Sessions of 186 , *District of*

Date when Sessions		Number of days of sittings.	Number of persons examined.	Number of Accused Persons.				Number of Cases.	
Commenced,	Ended.			For trial.	Convicted.	Acquitted.	Not tried.	Tried.	Postponed.

ERRATA, &c.

Page	5	line	21 *for* Rey *read* Reg.
,,	7	,,	2 *omit* and.
,,	,,	,,	16 *omit* comma.
,,	8	,,	17 *for* 1 d *read* and.
,,	8	,,	18 *for* 1863 *read* 1868.
,,	9	,,	7 *for* Act VII. of 1855 *read* Act VII. of 1853.
,,	11	,,	12 from bottom, *for* Malony, Madras, 193, *read* Malony, 1 Madras, 193.
,,	14	,,	6 *for* supperior *read* superior.
,,	15	,,	16 *for* This Section *read* Section 37.
,,	29	,,	20 *for* we possess *read* he entertains a different opinion.
,,	36	,,	4 from bottom, *for* 1 Maddoo Soodun *read* Muddoo Soodun.
,,	41	,,	2 *for* proved *read* proceed.
,,	,,	,,	20 *for* summous *read* summons.
,,	42	,,	20 *for* 1864 *read* 1862.
,,	,,	,,	29 *for* regarding *read* for.
,,	51	,,	23 from bottom, *for* riot *read* risk.
,,	52	,,	25 *after* to conduct the search, *read* Syud Hosein Ally Chowdry, 8 W. R., 74.
,,	60	,,	18 *for* with regard to *read* in execution of.
,,	63	,,	8 *omit* only.
,,	,,	,,	16 *for* Sonai *read* Sohai
,,	69	,,	2 *for* Kodal *read* Kodai
,,	,,	,,	12 *for* stock *read* stack
,,	,,	,,	8 from bottom, *for* Kodal *read* Kodai.
,,	73	,,	7 ,, ,, *for* Kunar *read* Kohar.
,,	75	,,	15 *for* shal *read* shall.
,,	77	,,	15 *for* 72 *read* 172.
,,	78	,,	5 from bottom, *for* Khal *read* Nipal.
,,	80	,,	2 ,, ,, *for* regarding *read* in cases concerning.
,,	88	,,	11 *for* Bukhonee *read* Bukhowree.
,,	92	,,	12 *for* Ramtapal *read* Ramtahal.
,,	,,	,,	30 *omit* and.
,,	100	,,	18 *for* h s *read* has.
,,	105	,,	21 *for* tha *read* that.
,,	108	,,	2 *for* Sonthal 6 W. R., 6, *read* Kahar, 5 W. R., 6.
,,	,,	,,	22 *for* May 19th *read* No. 16, dated May 27th.
,,	114	,,	11 *for* Bajee *read* Bazu.
,,	,,	,,	23 from bottom, *for* when *read* where.
,,	115	,,	25 ,, ,, *for* Bajee *read* Bazu.
,,	117	,,	5 *for* C. L. *read* cl.
,,	,,	,,	9 *omit* circular.
,,	121	,,	6 *omit* circular.
,,	,,	,,	15 *for* Kaaram *read* Kalaram.
,,	124	,,	21 from bottom, *for* S. *read* Sen.
,,	126	,,	6 *for* when *read* after.
,,	,,	,,	,, *for* the *read* that.
,,	128	,,	8 *for* small *read* shall.
,,	130	,,	19 from bottom, *for* Giridaun *read* Giridharee.
,,	,,	,,	18 ,, ,, *for* Faman *read* Farnan.
,,	136	,,	20 *for* Magistrrate *read* Magistrate.
,,	137	,,	13 from bottom, *for* 299, 1865, *read* 2 W. R., 19 C. L.

Page	151	line	10	*for* Pottee *read* Pittee.
,,	153	,,	6	*for* offence *read* offender.
,,	,,	,,	20	from bottom, *after* 269 *read Civil Cases.*
,,	154	,,	11	,, ,, *for* legitmate *read* legitimate
,,	155	,,	24	,, ,, *for* 90 *read* 60.
,,	,,	,,	11	,, ,, *for* 1854 *read* 1864.
,,	173	,,	12	*for* recal *read* recall.
,,	176	,,	29	*for* deposition *read* depositions.
,,	176	,,	30	*for* deposition *read* deposition.
,,	,,	,,	6	from bottom, *for* The depositions *read* In depositions.
,,	178	,,	17	*for* 70 *read* 73.
,,	184	,,	11	*for* Johur *read* Ishur.
,,	186	last line,		*for* execution *read* executive.
,,	188	,,		,, *for* Govind Loll *read* Gour Govind.
,,	195	line	11	*for* Cir. 8 *read* Cir. 13.
,,	,,	,,	17	from bottom, *for* aforesiaid *read* aforesaid.
,,	197	,,	13	,, ,, *for* Rughora *read* Rughooa.
,,	199	,,	27	,, ,, *for* charge *read* nature.
,,	201	,,	15	*for* 1 W. R., 19, *read* 1 W. R., 1.
,,	213	,,	22	*for* Court *read* Courts.
,,	217	,,	16	*for* Court *read* Courts.
,,	222	,,	21	from bottom, *for* 415 *read* 412
,,	233	,,	28	*for* conclusively *read* exclusively.
,,	235	,,	14	*for* Gaunaan *read* Gaundan.
,,	336	,,	14	*for* Rouo *read* Rollo.
,,	340	,,	12	from bottom, *for* Provincies *read* Provinces.
,,	341	,,	6	*for* Goal *read* Gaol.
,,	343	,,	5	in note *for* enacted *read* created.

ACT No. XXV OF 1861.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor-General on the 5th of September, 1861).

An Act for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter.

Preamble. WHEREAS it is expedient to simplify the Procedure of the Courts of Criminal Judicature not established by Royal Charter; It is enacted as follows :—

Short title. 1. This Act shall be called the Code of Criminal Procedure.

CHAPTER I.—ss. 2—20.

OF DEFINITIONS.

Interpretation. 2. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction.

"British India." 3. The words "British India" shall denote the territories that are or shall become vested in Her Majesty by the Statute 21 and 22 Vic. c. 106, entitled "An Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore, and Malacca.

"Special law." 4. The words "special law" shall denote a law applicable to a particular subject.

"Local law." 5. The words "local law" shall denote a law applicable only to a particular part of British India.*

*S 3, ante.

CH I. II. Ss. 19—21.

exercising the powers of Joint Magistrate, shall be the Magistrate in charge of the Sudder or Principal Sub-division of the District to which he stands appointed.

The late Agra Sudder Court (Cir. 20, 1863) has ruled that certain Pergunnahs, in charge of which the Magistrate of a District had placed a Subordinate Magistrate, could not be considered as a division of a District, an order of Government being necessary before such an officer can act as a Magistrate in charge of a division of a District.

* S. 3.

19. In any part of British India* to which this Act shall be extended, under the provisions of Section 445, the words "Sudder Court" shall denote the highest Criminal Court of appeal or revision in such part established.

"Sudder Court."

Thus, in the Lower and North-Western Provinces of Bengal, in Madras, and in Bombay, the High Courts are referred to in this Code by the term "Sudder Court;" in the Punjab the Chief Court; and in Oude, in the Central Provinces, and Mysore, the Judicial Commissioner occupies the position of a Sudder Court.

20. Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British Calendar.

"Year."

"Month"

CHAPTER II.—ss. 21—42.

OF THE JURISDICTION OF THE CRIMINAL COURTS.

Previous to entering upon the execution of the duties of their office, Judicial Officers are required to take and subscribe to an oath before such persons as the Government may commission to administer it. The forms of oaths, which vary slightly in the different Presidencies, are to be found in the following Regulations:—

For Sessions Judges—

Regulation (Bengal) IX of 1793, S. 34;
Regulation (Madras) X of 1816, Appendix 1;
Regulation (Bombay) XIII of 1827, S. 7 Cl. 2.

For Magistrates——

Regulations (Bengal) IX of 1793, S. 2, and XVI of 1810, Ss. 2, 5;
Regulation (Madras) IX of 1816, Ss. 3, 5.
Regulation (Bombay) XIII of 1827, S. 3 Cl. 5.

By Act XXI of 1857 the Government is empowered to dispense with this oath, and to substitute for it a declaration in writing to the same effect.

† S. 11.

21. The Criminal Courts† of the several grades, according to the powers vested in them respectively by this Act, shall have jurisdiction in respect of offences punishable under the Indian Penal Code (Act XLV. of 1860), or under

Offences cognizable by Criminal Courts.

any special* or local† law (except offences which are by any such law made punishable by some other authority therein specially mentioned), and, in the investigation and trial of the offences hereby declared to be within their jurisdiction, shall be guided by the provisions of this Act.

* S. 4.
† S. 5.

According to the terms of this Section, it would seem that the Code of Criminal Procedure would not apply to every case investigated or tried by a Justice of the Peace not being a Magistrate, for such officers are not "Criminal Courts" as defined by Section 11. Such cases would, however, rarely, if ever, occur.

By what Courts the offences mentioned in the Schedule are triable, and within what limits such Courts may pass sentence.

22. The offences mentioned in the Schedule annexed to this Act shall, subject to the provision contained in the third explanatory note prefixed to the said Schedule, be triable by the Courts specified in Column 7 of the said Schedule, and such Courts shall be competent to pass sentence in respect of such offences within the following limits, (that is to say) :—

The third explanatory note to the Schedule declares that a superior Court has jurisdiction over an offence stated to be triable by a Lower Court; but as regards the power of Sessions Judges in this respect, the provisions of Section 359 should be borne in mind.

Powers of Court of Session.

The Court of Session.‡ Death (subject to confirmation by the Sudder§ Court). Transportation,‖ imprisonment of either description for a period not exceeding fourteen years, including such solitary confinement¶ as is authorized by law, or fine to an unlimited amount,* or both transportation and fine, or imprisonment and fine, in cases in which both punishments are authorized by the Indian Penal Code. In cases in which, according to the Indian Penal Code, forfeiture† of property may be adjudged, the Court of Session‡ may adjudge such forfeiture in addition to the sentence.

‡ S. 13.
§ S. 19.
‖ Ss. 53, 59, Penal Code.
¶ Ss. 73, 74, Penal Code.
* S. 63, Penal Code.
† Ss. 61, 62, Penal Code.
‡ S. 13.

Assistant Sessions Judges in Bombay.

In the Presidency of Bombay, it shall be lawful for a Sessions Judge to delegate cases for trial by an Assistant Sessions Judge : and such Assistant Sessions Judge shall be competent in such cases to pass sentences within the following limits :—Imprisonment of either description for a term not exceeding seven years (including such solitary confinement as is authorized by law), or fine or both. If the sentence be one of imprisonment for a term

CH. II. S. 22.

exceeding three years, it shall be passed, subject to confirmation by the Sessions Judge. The Sessions Judge may review and hear appeals against the proceedings of his Assistants, and may confirm and amend (but not so as to enhance), or may reverse their sentences or orders. It shall not be competent to an Assistant Sessions Judge to review or hear an appeal against the proceedings of a Magistrate.*

* S. 15.

In case of the Sessions Judge being absent or deceased, no arrangement for the discharge of his duties having been made by Government, the Assistant of highest rank on the spot shall take charge of, and conduct, the said duties, except that he shall not pass any sentence beyond the extent to which he is authorized in his capacity of Assistant.—Regulation XIII (Bombay) of 1827, S. 8 Cl. 2.

† Ss. 14, 18.

‡ S. 16.

Powers of the Magistrate of the District.

The Magistrate of the District,† or other Officer authorized to exercise the powers‡ of a Magistrate. Imprisonment of either description§ not exceeding the term of two years, including such solitary confinement‖ as is authorized by law, or fine to the extent of one thousand Rupees, or both imprisonment and fine in all cases in which both punishments are authorized by the Indian Penal Code.

§ *i. e.*, rigorous or simple, S. 53 Cl. 4, Penal Code.

‖ Ss. 73, 74, Penal Code.

Subordinate Magistrates or Officers authorized to exercise any of the powers¶ of a Magistrate—

¶ S. 17.

Powers of Subordinate Magistrates, 1st Class

1st Class.—Imprisonment of either description* not exceeding six months, or fine not exceeding two hundred Rupees, or both imprisonment and fine in all cases in which both punishments are authorized by the Indian Penal Code.

* *i. e.*, rigorous or simple, S. 53, Cl. 4, Penal Code.

2nd Class.

2nd Class.—Imprisonment of either description† not exceeding one month, or fine not exceeding fifty Rupees, or both imprisonment and fine in all cases in which both punishments are authorized by the Indian Penal Code.

† *i. e.*, rigorous or simple, S. 53, Cl. 4, Penal Code.

No sentence of solitary confinement, under Section 73 of the Indian Penal Code, shall be passed by any Court inferior to an Officer exercising the powers‡ of a Magistrate.

‡ *i. e*, Full powers, S. 16.

By S. 8, Act VI. of 1864 (Whipping Act) the above-mentioned officers, except Subordinate Magistrates of the 2nd Class, unless expressly empowered by Government, may pass sentences of whipping for certain offences specified in the Act. See Appendix A.

The powers of a Magistrate under any special or local law are not restricted by S. 22, Code of Criminal Procedure. Thus, when under the Excise Law (Act XXI. 1856) a fine of 10 Rupees per seer on the whole

quantity of contraband opium found without a license may be passed by a Magistrate, and, although it may in the aggregate exceed 1,000 Rupees, it is not illegal.—Calcutta High Court, Suroop Chunder Dutt, 7, W. R., 29.

Section 359 enacts that, except in cases referred to in Section 172 of this Act, a Court of Session as a Court of Original Criminal Jurisdiction, shall not take cognizance of any offence, but on a charge preferred by a Magistrate or other officer specially empowered under this Act, or under any other law to make commitment to such Court.

The cases referred to in Section 172 relate to offences committed before a Court of Session, and under its own cognizance, being exclusively triable by it.

Throughout British India, except in the Presidency of Madras, only officers exercising the full powers of a Magistrate, or Subordinate Magistrates specially empowered by Government (S. 38) can make commitments to a Court of Session. In the Presidency of Madras, Subordinate Magistrates of the 1st and 2nd classes have the power of committing, to the Court of Session, any persons charged with offences triable exclusively by that Court. (S. 356).

The powers thus given to the several grades of officers, presiding in Criminal Courts, are under certain circumstances enhanced by S. 46, which enacts that, when a person shall be convicted at one time of two or more offences punishable under the same or different Sections of the Penal Code, it shall be lawful for the Court to sentence such person for the offences of which he shall have been convicted to the several penalties prescribed by the said Code which such Court is competent to inflict: such penalties to commence the one after the expiration of the other. It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which such Court is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court: Provided that in no case shall the person be sentenced to imprisonment for a longer period than fourteen years; and Provided also that, if the case be tried by a Magistrate, the punishment shall not, in the aggregate, exceed twice the extent of punishment which such Magistrate is, by his ordinary jurisdiction, competent to inflict.

Police Officers vested with the powers of a Magistrate are to exercise them only in the restricted manner set forth in S. 6 Act V. of 1861. They have no power to punish under the Indian Penal Code.—Jud. Com., Punjab, 31st Jan., 1862.

In the note to S. 29 Act V. of 1861, Appendix D, will be found some important Rulings bearing on the power of a Magistrate over Police Officers.

The powers of Magistrates, with regard to awarding sentences of imprisonment in default of payment of fine, are subject to the following rules:—

The Penal Code draws a distinction between offences for which fine as well as imprisonment may be awarded, and offences for which fine is the only punishment. For the former class of offences, the term of imprisonment in default of payment of fine, must "not exceed one-fourth of the term of imprisonment, which is the maximum fixed for the offence" (S. 65, Penal Code); and, as regards the powers of Magistrates in awarding imprisonment in default of payment of fine for such offences, S. 45, Criminal Procedure, declares that it "shall in no case exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence other than as imprisonment in default of payment of fine."

For cases regarding offences punishable with fine only, Section 67, Penal Code, regulates the term of the alternative sentence of imprisonment in default of payment of fine, by declaring that it shall not exceed two months when the amount of fine shall not exceed fifty Rupees, four months when the amount shall not exceed one hundred Rupees, and six months in any other case.

By Act XV. of 1862, S. 1, the Governor-General in Council, or the Local Government in any territory to which the Code of Criminal Procedure

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has been extended, and which is not subject to the General Regulations of Bengal, Madras, and Bombay, have authority to vest the Chief Officer charged with the executive administration in a District in Criminal matters, with power to try all offences not punishable with death, and to pass sentence of imprisonment of either description for a term not exceeding seven years, including such solitary confinement as is authorized by law, or fine, or both.

Local Government may invest any person with powers of Magistrate or Subordinate Magistrate.

23. The Local Government may invest any person with the powers* of a Magistrate or of a Subordinate Magistrate of the first or second class, as described in the last preceding Section, with a view to the exercise, by such person, of such powers under this Act or under any special† or local‡ law.

i. e. Full powers, S. 16.

† S. 4.

‡ S. 5.

Under the provisions of Act XXXII. of 1867, the Governor-General in Council has delegated to the Chief Commissioners of Oude, the Central Provinces, and British Burmah, the powers conferred on a Local Government by S. 23 Act XXV. of 1861.—*Gazette of India* of 1867, page 1223, 1 d. of 1863, p. 44.

Criminal Courts to have jurisdiction over all persons, except persons expressly exempted.

24. The Criminal Courts§ shall have jurisdiction over all persons, except such persons as, by any Act of Parliament, or by any Regulation of the Codes of Bengal, Madras, and Bombay, respectively, or by this Act, or any other Act of the Governor-General of India in Council, are, or shall be, exempted from their jurisdiction.

§ S. 11.

Thus no Magistrate, who is not also a Justice of the Peace, can commit or hold to trial, any European British subject to take his trial before a Supreme (High) Court of Judicature (S. 39); and further, the jurisdiction given to Magistrates under 53, Geo. III., C. 155, S. 105, can be exercised only by a Justice of the Peace (S. 42).

No person exempted from Criminal Procedure by reason of place of birth or of descent.

25. No person whatever shall, by reason of place of birth, or by reason of descent, be exempt from the rules of Criminal Procedure contained in this Act. Provided that nothing in this Section shall be held to authorize the trial or commitment for trial before any Criminal Court‖ of any person who, in respect of the offence with which he is charged, is not subject to the jurisdiction of that Court.

Proviso.

‖ S. 11.

Offence to be ordinarily tried in the jurisdiction where it is committed.

26. Except where otherwise expressly provided by this Act, every offence shall be enquired¶ into and determined¶ in the District* or division of a District* in which the offence was committed. Provided that nothing in this Section shall exempt European British subjects from being tried and

¶ S. 9.

* S 18.

Proviso.

convicted before the Supreme* Courts of Judicature for offences committed beyond the local limits of such Courts.

European British subjects can, under S. 39, be committed, or held to bail for trial, only by a Justice of the Peace. They can, however, for certain offences, be summarily convicted by a Magistrate who is a Justice of the Peace. S. 53, Geo. III., C. 155, S. 105, and Act VII. of 1855 (Appendix B), and Ss. 163 and 165 of this Code. The law under which they are to be tried is declared by the Letters Patent constituting the High Courts of Calcutta, Madras, and Bombay, to be Act XLV. of 1860, called the "Indian Penal Code," subject "to such alterations, modifications, and additions in and to such Code, as may have been or may be prescribed by any Acts or Regulations made by the Governor-General in Council."

* Now High Courts in their Extraordinary Original Criminal Jurisdiction.

The Procedure in Criminal cases against European British subjects is described by S. 38 of the same Letters Patent read with S. 25 of this Code: "And we do further ordain that the proceedings in all Criminal cases, which shall be brought before the said High Court of Judicature at Fort William in Bengal, in the exercise of its Ordinary Original Criminal Jurisdiction, and also in all other Criminal cases over which the said Supreme Court now has jurisdiction, shall be regulated by the procedure and practice now in use in the said Supreme Court, and that the proceedings in all other Criminal cases shall be regulated by the Code of Criminal Procedure prescribed by an Act passed by the Governor-General in Council, and being Act XXV. of 1861, or by such further or other enactments of the Governor-General in Council, in relation to Criminal Procedure, as are now in force: Provided always that the regulation of such proceedings, respectively, shall be subject to such laws and regulations as shall be hereafter made by the Governor-General in Council, in relation to such proceedings respectively."

Looking to the terms of S 25, and the Letters Patent, it would seem that all European British subjects would be subject to the provisions of the Code of Criminal Procedure in all matters *not being trials.*

May be tried in the jurisdiction where the act is done, or where the consequence ensues.

27. When a person shall be accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be enquired into† or determined† in any District‡ or division of a District in which any such thing shall have been done, or any such consequence shall have ensued.

† S. 9.
‡ S 18.

Act XVIII. of 1862, S. 31, confers similar jurisdiction on High Courts in their Original Criminal Jurisdiction.

A Magistrate should act under S. 27 and the following Sections solely with reference to the convenience of the public: ordinarily the proper District for the enquiry and trial of offences falling under those Sections, would be that where the witnesses could, with the least inconvenience, attend. In such cases, therefore, the Magistrate to whom the complainant or prosecutor may apply, should commence the investigation, and proceed with the enquiry and trial, unless he find, in the course of enquiry, that the case can be more conveniently tried in another District. In the event of the latter contingency, he should suspend further proceedings, and place himself in communication with the Magistrate of such other District, recommending that the case be removed to that District. If the Magistrate of this District should concur, but not otherwise, the proceedings and the accused should be forwarded to such other Magistrate, and the prosecutor directed to attend and prosecute his complaint. If the other Magistrate differ from

CH. II. Ss. 28 & 29.

him in his opinion as to the District in which the investigation and trial can be most conveniently held, the first Magistrate should either proceed with the enquiry and trial, or refer the question of venue for the determination of the Sudder Court.—(Agra Sudder Court, Circular 21, 1864. Also Judicial Commissioner, Punjab, Circular 1864).

A girl was sold at Mirzapore by her mother to a prostitute who took her to Benares. The Sessions Judge of Benares tried and sentenced the latter woman, under S. 373, Penal Code, for "buying a minor with "intent that she shall be employed for purposes of prostitution," over-ruling the plea of want of jurisdiction, on the ground that possession of the girl was a consequence by reason of which she was accused of an offence. On appeal, the Agra Sudder Court allowed the plea, holding that the purchase with intent, &c., which took place at Mirzapore, was the offence, and that no "consequence," such as is contempleted by S. 27, had ensued. The Court further ruled that the terms "anything which has been done," mean some act constituting the offence, or part of it, and that the term "any consequence which has ensued" mean some consequence modifying or completing that act.—6 Agra 46, 136.

Abetment.

28. The abetment* of an offence, wherever such abetment* shall have taken place, may be enquired into† or determined† in any District‡ or division of a District‡ in which the offence abetted may be enquired into† or determined† by any Court which has jurisdiction to try such offence, as if the abetment* had been committed at the same place at which the offence abetted was wholly or partly committed; or the abetment may be enquired into† or determined† in any District‡ or division of a District‡ within which the abettor§ has done any thing for abetting the commission of such offence.

* S 107, Penal Code.

† S. 9.

‡ S. 18.

§ S. 108, Penal Code.

See note to S. 27.

Offence committed on boundary.

29. When any offence shall be committed on the boundary or boundaries of two or more Districts,‖ whether subject to the same Local Government or not, or of two or more divisions of a District, or shall be begun in one District‖ or division of a District,‖ and completed in another, whether such Districts‖ be subject to the same Local Government or not, every such offence may be enquired into¶ or determined¶ in any of such Districts‖ or divisions of a District,‖ in the same manner as if it had been actually and wholly committed therein.

‖ S. 18.

¶ S. 9.

See note to S. 27.

Act XVIII. of 1862, S. 34, provides in the same manner for cases in which the Original Criminal *Local* Jurisdiction of a High Court may be doubtful.

The term "Government" is not defined by the Code of Criminal Procedure. According to the Indian Penal Code, S. 17, it denotes the person or persons authorized by law to administe rexecutive Government in any part of British India, *i. e.*, in any of the territories which are or shall

become vested in Her Majesty by the Statute 21 and 22 Vic. c. 109, entitled "an Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore, and Malacca. S. 15, Penal Code, and S. 3, Criminal Procedure).

Offence committed during journey, &c.

30. When any offence shall be committed on any person, or on, or in respect of, any property, in or upon any coach, cart, or other carriage or conveyance, or upon any beast of burden employed in any journey, or shall be committed on any person, or on, or in respect of, any property on board any vessel employed on any voyage or journey upon any navigable river, canal, or inland navigation, such offence may be enquired into* or determined* in any District† or division of a District,† through any part whereof such coach, cart, carriage, conveyance, beast of burden, or vessel, shall have passed in the course of the journey or voyage during which such offence shall have been committed, in the same manner as if the offence had been actually and wholly committed in such District† or division of a District;† and in all cases where the side, middle, or other part of any highway, or the side, bank, middle, or other part of any such river, canal, or navigation, shall constitute the boundary of any two Districts† or divisions of a District,† such offence may be enquired into* or determined* in either of such Districts† or divisions of a District† through or adjoining to, or by the boundary of any part whereof such coach, cart, carriage, conveyance, beast of burden, or vessel, shall have passed in the course of the journey or voyage during which such offence shall have been committed, in the same manner as if it had actually and wholly been committed in such District† or division of a District.†

* S. 9.

† S. 18.

See note to S. 27.

This Section is similar to S. 35 Act XVIII. of 1862, the Procedure Act for High Courts in their Original Criminal Jurisdiction. It will, therefore, not be out of place to quote a judgment of the Madras High Court (Reg. *vs.* Malony, Madras 193,) on the matter of jurisdiction. In that case a Railway Guard was charged under S. 27 of the Railway Act with drunkenness whilst in charge of a train, &c. He was removed from that train and detained at a place beyond the local jurisdiction of the High Court, but he broke away and continued his journey to Madras. The High Court held that it had no jurisdiction to try the offence, since the proper effect and construction of S. 35 Act XVIII. of 1862, is that, if a person be accused of an offence committed whilst a journey or voyage is *going on*, he may be tried if any part of that journey or voyage during which the offence is alleged to have been committed, lies within the local limits of the Court's jurisdiction. Here the journey on which the offence was alleged to have been committed ended, so far as regarded the person accused, and the offence, at a place beyond those limits.

Receiving, &c., stolen property.

31. If any person be charged with any offence punishable under Sections 411, 412, or 414 of the Indian Penal Code, under the head "Of the receiving of stolen property," such offence may be enquired into* or determined* in any District† or division of a District† in which such person shall have, or shall have had, such stolen property‡ in his possession, or in any District† or division of a District† in which the offence by which such property came to be stolen property within the meaning of the said Code, may be enquired into* or determined.*

* S. 9.

† S. 18.

‡ S. 410, Penal Code.

See note to S. 27.

Act XVIII. of 1862, S. 33, provides for similar cases concerning the Original Criminal Jurisdiction of a High Court.

In connection with S. 31 of this Code it will be well to note the terms of S. 27 of the Penal Code: "when property is in the possession "of a person's wife, clerk, or servant, on account of that person, it is in "that person's possession within the meaning of this Code. *Explanation:* "A person employed temporarily, or on a particular occasion in the "capacity of a clerk or servant, is a clerk or servant within the meaning of "this Section."

Being a thug, &c.

32. Whenever any person is charged with being a thug,§ or with murder as a thug,§ or with dacoity‖ with¶ or without murder, or with having belonged to a gang of dacoits,* or with having belonged† to any wandering or other gang of thieves associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, the offence may be enquired‡ into in any District§ in which the accused person is, by any Magistrate competent‖ to commit to a Court of Session,¶ and the accused person may be committed to the Court of Session¶ to which such Magistrate is subordinate.

§ S. 310, Penal Code.

‖ Ss. 391, 395, Penal Code.

¶ S. 396, Penal Code.

* S. 400, Penal Code.

† S. 401, Penal Code.

‡ S. 9.

§ S. 18.

‖ Cl. S. 38.

¶ S. 13.

See note to S. 27.

The late Calcutta Sudder Court (496, 1862) and the High Court (3 W. R. 23, C. L.) have ruled that, under S. 32, any of the offences therein specified can be enquired into only in the District in which the accused person is, that is to say, happens to be, *when charged or arrested.*

Escape from lawful custody under sentence.

33. If any person shall escape from any custody in which he is lawfully detained in pursuance of a sentence of a Court of Justice* or by virtue of a commutation† of such sentence, or shall be charged with any offence punishable under Section 227 of the Indian Penal Code, or under Section 12 of Act XXIV. of 1855 *(relating to Penal Servitude)*, the offence may be enquired‡ into or determined,‡

* S. 12.

† Ss. 54, 55, Penal Code.

‡ S. 9.

either in the District* or division of a District* in which such person shall be apprehended and re-taken, or in the District* or division of a District* in which he was formerly tried, or in the case of an escape from custody, in the District* in which he shall have escaped from custody.

* S. 18.

See note to S. 27.

A similar provision is made by Act XVIII. of 1862, S. 36, for High Courts in their Original Criminal Jurisdiction.

Unless the definition of a Judge, as contained in S. 19, Penal Code, be applied to the definition of a Court of Justice given in S. 12, Criminal Procedure, there might be considerable difficulty in making the terms of S. 33 extend to the enquiry or determination of cases concerning persons charged with escaping from custody in which they may be lawfully detained in pursuance of a sentence of a *Magistrate*.

An escape from lawful custody on the part of a convict is punishable under S. 224, Penal Code.

Act IV. of 1867 has extended the application of S. 224 to the cases of persons under custody on conviction of an offence under any special or local law. Escape from lawful detention on default of furnishing security for good behaviour under Chapter XIX. of this Code is made punishable by S. 3 of that Act.

S. 227, Penal Code, enacts that,— "Whoever, having accepted any "conditional remission of punishment, knowingly violates any condition on "which such remission was granted, shall be punished with the punishment "to which he was originally sentenced, if he has already suffered no part "of that punishment; and if he has suffered any part of that punishment, "then with so much of that punishment as he has not already suffered."

Regarding the remission of sentences, see S. 54, *post*.

Act XXIV. of 1855 is entitled "An Act to substitute penal servitude for the punishment of transportation in respect of European and American convicts, and to amend the law relating to the removal of such convicts." S. 9 of that Act declares that it "shall be lawful for the Governor-"General of India in Council to grant to any convict, who may hereafter "be sentenced or ordered to be kept in penal servitude, a license to be at large "within the said territories, or in such part thereof as in such license shall be "expressed during such portion of his term of servitude, and upon such "conditions in all respects as to the Governor-General of India in Council "shall seem fit: and it shall be lawful for the said Governor-General in "Council at any time to revoke or alter such license by a like order."

Under S. 12: "If a license be granted under S. 9 of this Act, upon "condition specified therein, and the convict to whom the license is granted "violate any such condition, or shall go beyond the limits specified in the "license, or knowing of the revocation of such license, shall neglect forthwith "to surrender himself, or shall conceal himself, or endeavour to avoid being "apprehended, he shall be liable, upon conviction, to be sentenced to penal "servitude for a term not exceeding the full term of penal servitude men-"tioned in the original sentence or order."

Sudder Court to decide when doubt arises as to the jurisdiction where an enquiry shall take place.

34. Whenever any doubt shall arise as to the District † in which any offence should be enquired into‡ or determined, ‡ it shall be lawful for the Sudder Court,§ within whose jurisdiction the offender is apprehended, to decide in which District † the offence shall be determined.‡

† S. 18.

‡ S. 9.

§ S. 19.

Sudder Court may transfer any case from one jurisdiction to another.

35. It shall be competent to the Sudder Court* to order the transfer of any Criminal case or appeal from a Criminal Court† subordinate to its authority, to any other such Criminal Court† of equal or superior jurisdiction, or to order that any offence shall be enquired into‡ or determined‡ in any District§ or division of a District,§ other than that in which the offence shall have been committed, whenever it shall appear to such Sudder Court* that such order will promote the ends of justice, or tend to the general convenience of the parties or witnesses.

* S. 19.
† S. 11.
‡ S. 9.
§ S. 18

The High Court cannot, under S. 35, transfer *a class of offences* occurring in different Districts for trial in one particular District. It can only, under certain circumstances, transfer particular and specific Criminal cases or appeals from one jurisdiction to another (3 W. R. 2 C. L.), and it is only where there are sufficient reasons for supposing that the trial will not be fairly held, and where circumstances tend strongly to such a conclusion that the High Court will exercise the power of transferring a case from one Magistrate to another at the same Station.—Krishto Chunder Ghose, 2 W. R., 58.

Magistrate may withdraw any case from a subordinate Court and try it himself, or refer it to any other such Court.

36. It shall be competent to the Magistrate¶ of the District,* or to a Magistrate† in charge of a division of a District,* to withdraw any Criminal case from any Court subordinate to such Magistrate within his District* or Division,* and to try the case himself, or to refer it for trial to any other such Court competent to try the same.

¶ S. 14.
* S. 18.
† S. 15.

The jurisdiction of a Magistrate in charge of a division of a District, exercising the full powers of a Magistrate, is co-ordinate with, rather than exclusive of, the jurisdiction of the Magistrate of the District. Whatever the Code of Criminal Procedure has authorised the Magistrate of the District to do, he may do throughout that District. He is not debarred by the existence of a co-ordinate authority in certain parts of his District from exercising within such parts the powers vested in him. (Madras High Court, 1864). If, before decision of a case, the Magistrate of the District should withdraw a case under trial before a Magistrate exercising the full powers of a Magistrate, that officer cannot refuse to send it, although he may not be judicially subordinate to the Magistrate of the District. [Calcutta High Court, 504, 1864.]

The legality of an order, passed by a Magistrate of a District, withdrawing from the file of another Magistrate subordinate to him, but exercising full powers, and being also a Justice of the Peace, a case against a European British subject, being called into question, the Calcutta High Court (600, 1864) ruled that, as it did not appear that the case was before the Subordinate Magistrate otherwise than as a Magistrate, nothing having been done by that officer as a Justice of the Peace (S. 40), the Magistrate of the District had the power claimed. If the accused had been examined or remanded for further enquiry by the Subordinate Magistrate as Justice of the Peace, the Magistrate's order could not be legally complied with.

Commitment for trial before Supreme Court.

37. It shall be competent to the Magistrate‡ of the District,§ or to any other Officer exercising the powers of a Magistrate,‖ to hold the preliminary enquiry into any

‡ S. 14.
§ S. 18.
‖ S. 16.

cases triable by a Supreme Court of Judicature, and to commit or hold to bail persons to take their trial before such Court, and to exercise all their powers necessary for such purpose.

The *Supreme Courts of Judicature* are now High Courts in their Extraordinary Original Criminal Jurisdiction.

In the Punjab and its Dependencies the Chief Court, constituted under Act IV. 1866, has power as a Court of Original Jurisdiction to try European British subjects committed to it for trial, and commitments can now be made only to such Court by any Court or officer in the Punjab. S. 20.

Pending the orders of the Chief Court as to the place of trial, every European British subject so committed to trial shall (if not out on bail) be committed by the Justice of the Peace or Magistrate for intermediate custody to the nearest Criminal Jail in which he can be most conveniently confined. S. 27.

This Section should be read with S. 39, which would seem to restrict the jurisdiction of a Magistrate over European British subjects.

Subordinate Magistrate may be empowered to prepare case for trial before the Court of Session or Supreme Court.

38. The Local Government may empower any Subordinate Magistrate* of the first or second class, not vested with such power by any law for the time being in force, to hold the preliminary enquiry into cases triable by the Court of Session† or by any Supreme Court of Judicature, and may empower such Subordinate Magistrate to commit, or hold to bail, persons to take their trial before such Court of Session† or Supreme Court, and to exercise all the powers necessary for such purpose.

* S. 22.

† S. 33.

There is no special definition of "Local Government" in this Code. It would probably be the same as the Government of a Presidency. See Ss. 17 and 18, Penal Code.

The Supreme Courts of Judicature are now High Courts in their Extraordinary Original Criminal Jurisdiction. The power of the Local Government to give jurisdiction to a Magistrate over European British subjects is restricted by S. 39.

Sub-Magistrates in Madras are empowered by S. 356 to make commitments to the Court of Session.

A charge of an offence triable by a Court of Session, or by the Magistrate of the District (see Schedule) having been preferred to a Subordinate Magistrate, who was not competent to hold the trial, but was vested with power under S. 38 to hold preliminary enquiry into cases triable by the Court of Session, the Calcutta High Court (2 W. R. 19 C. L.) held that that officer should have referred it for trial to the Magistrate of the District (S. 276), instead of holding a preliminary enquiry, and committing it to the Court of Session; for the latter procedure, which was adopted by him, though strictly legal, should as much as possible be avoided, as it takes up unnecessarily the more valuable time of the Sessions Judge.

Only Justices of the Peace empowered to commit European British subjects for trial.

39. No person who is not a Justice of the Peace shall commit, or hold to bail, any European British subject to take his trial before a Supreme Court of Judicature.

CH. II. Ss. 40 & 41

For the laws and rules regarding the appointment of Justices of the Peace and the trial of European British subjects, see Appendix B.

This Section modifies the provisions of Ss. 23, 37, and 38, which should be read with S. 39 as a proviso.

Procedure when a European British subject is charged with an offence triable by Supreme Court.

40. When a European British subject is charged with an offence triable by a Supreme Court of Judicature, any Magistrate* may hear the complaint against such person, and may issue a warrant of arrest, or hold to bail such person, with a view to the complaint being investigated by a Justice of the Peace.

* S. 15

Any Magistrate may, on complaint against a European British subject, issue a warrant of arrest, or hold him to bail, with a view to the complaint *being investigated* by a Justice of the Peace; but only a Magistrate who is a Justice of the Peace can hold such person to bail *to take his trial* before the High Court. (See S. 39).

Procedure when a European is arrested by an Officer not being a Justice of the Peace.

41. When a European British subject has been arrested under a warrant issued under the last preceding Section by a Magistrate† not being a Justice of the Peace, if such Magistrate† considers that there is a sufficient ground for proceeding, he shall forthwith forward the person arrested to a Justice of the Peace, or if the offence with which such person is charged is bailable, shall, if sufficient bail be tendered, admit him to bail for his appearance before a Justice of the Peace. When the person accused is brought or appears before a Justice of the Peace, under this Section, such Justice of the Peace shall himself hold the preliminary enquiry into the case, before he commits, or holds to bail, such person for trial before the Supreme Court of Judicature.

† S. 15.

Whether an offence is, or is not bailable, will appear on reference to the Schedule, Col. 5.

When a European British subject and a native subject are together charged with an offence requiring the commitment of the former to the High Court for trial, the latter should not be committed to the High Court also, but should, in the ordinary manner, be committed to the Sessions Court competent to try the offence.—Calcutta High Court, Circular 1, 1866.

As regards the procedure to be followed in cases in which European British subjects are concerned, see S. 226 *et seq*; 9 Geo. iv. C. 74, S. 2, and Act XIII. of 1865, S. 28, Appendix B.

A European British subject was discharged by a Magistrate and Justice of the Peace, because that officer considered that the act charged had been committed in the exercise of the right of private defence (S. 100, Penal Code). The Calcutta High Court (Morgan, J.) thus expressed its opinion on the proceedings of the Magistrate.—"On the facts as stated by the Magistrate in his written order, the preliminary investigation ought to have been proceeded with. Scarcely any matter that might be disclosed during its further progress, could excuse the Magistrate from sending the case to a higher tribunal, in

order that the circumstance under which the accused had inflicted wounds by a gun loaded with ball might be fully enquired into, and that the superior tribunals should determine whether or not the limits of the right of private defence had been exceeded."—*In re* Brae, 3 W. R., 64.

Saving of jurisdiction given by 53 Geo. III. c. 155, s. 105.

42. Nothing in this Chapter shall interfere with the jurisdiction given by the Statute 53 Geo. III. c. 155, s. 105, or Act VII. of 1853 (*to extend the jurisdiction of Magistrates under the Stat.* 53 *George* III. *c.* 155, *s.* 105, *in cases of assault, forcible entries, and other injuries accompanied by force not being felonies*). Provided that the jurisdiction given by the said Statute and the said Act shall be exercised only by a Justice of the Peace.

Proviso.

It should be noted that S. 42 restricts the powers given to Magistrates under Statute 53 Geo. III., c. 155, S. 105, and Act VII. of 1853, inasmuch as it declares that such power shall be exercised only by a Justice of the Peace.—See also S. 39, *ante*.

For Statute 53 George III., c. 155, S. 105, and Act VII. of 1853, see Appendix B, which also contains many important rules of practice regarding the enquiry into, and determination of, charges of offences committed by European British subjects.

For the law regarding appeals against convictions and sentences passed under the above laws by a Justice of the Peace, see S. 410.

CHAPTER III.—Ss. 43—63.

Preliminary Rules.

Complainants and witnesses to be examined according to law for time being in force.

43. In all Criminal Courts* complainants and witnesses shall be examined upon oath or affirmation, or otherwise, according to the provisions of the law† for the time being in force in relation to the examination of witnesses.

* S. 11.

† Acts V. of 1840, and II. of 1847.

Act V. of 1840 is to the following effect :—

1. Whereas obstruction to justice and other inconveniences have arisen in consequence of persons of the Hindoo or Mahommedan persuasion being compelled to swear by the water of the Ganges, or upon the Koran, or upon other forms which are repugnant to their consciences or feelings:

It is hereby enacted, that except as hereinafter provided, instead of an oath or declaration now authorised or required by law, every individual of the classes aforesaid, within the territories of the East India Company, shall make affirmation to the following effect :—

"I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth."

(Ss. 2 and 3 have been repealed by Act XVII. of 1862).

4. And it is hereby provided that this Act shall not extend to any declaration made under authority of Act XXI. of 1837, nor to any declaration or affirmation made in any of Her Majesty's Courts of Justice.

CH. III. S. 44.

By Act II. of 1847 it is enacted that "the words 'Her Majesty's Courts of Justice' in Act V. 1840, S. 4, shall be deemed not to have meant nor extended to, and not to mean nor extend to, the Courts of the Justices of the Peace."

If a witness is not a Hindoo or Mahommedan, the solemn affirmation should not be administered to him, but he should be sworn.—Calcutta High Court, Ramtohol Singh, 5 W. R., 65.

A member of the Church of England is not exempt by law from taking an oath in a Court of Justice in India, although he may entertain sincere objections against taking an oath on the Bible, and be willing to make an affirmation binding on his conscience. The English Statute 17 and 18 Vic., c. 125, does not apply to India.—P. Valu Mudali, 2 Madras, 246.

Any person who, by reason of immature age, or want of religious belief, or who by reason of defect of religious belief, ought not, in the opinion of the Court or person, (before whom his attendance is required,) to be admitted to give evidence on oath or solemn affirmation, shall be admitted to give evidence on simple affirmation, declaring that he will speak the truth, the whole truth, and nothing but the truth.—Act II. 1855, S. 15.

S 14 declares that the following person are incapable of testifying:—

1. Children under seven years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.

2. Persons of unsound mind, who, at the time of their examination, appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly: and no person, who is known to be of unsound mind, shall be liable to be summoned as a witness, without the consent, previously obtained, of the Court, or person by whom his attendance is required.

Court may apply portion of fine in compensation for loss or damage caused, &c

44. In cases in which, by the sentence or order of any Criminal Court,* a fine is imposed upon a conviction for any offence made punishable by fine, whether the offence be punishable or punished by fine only or otherwise, it shall be lawful for such Court to order that the fine or any part thereof, not exceeding the loss appearing to be caused to the person who has suffered by such offence, and any special damage of a pecuniary nature that may have resulted to such person by such offence, and any expenses incurred by the complainant in the prosecution, as the Court may consider reasonable and proper, be paid to or for the benefit of such person according to the discretion of the Court, and in every such case the fine when levied or paid shall be paid and distributed accordingly. If the fine be awarded by a Court whose decision is subject to revision, the amount awarded to the person injured shall not be paid to such person, until a period of two months shall have elapsed from the date of the award.

* S. 11.

Compensation awarded under S. 44 to a *complainant* should not be confounded with *amends* awarded under S. 270 *to a person against whom* a frivolous or vexatious complaint regarding a petty offence has been made.

The Calcutta High Court [Circular, 16th June 1862], has ruled that "there is nothing in the law to prevent the immediate issue of a warrant of execution in realization of the amount of a fine imposed as a sentence on a convict, but payment to a complainant as compensation must be deferred until expiry of the term of appeal." As to whether "bodily injury" is a proper ground for awarding compensation to a complainant, the rulings of the Calcutta High Court have been contradictory. In two instances [3 W. R. 18 C. L., 5 Ibid, 9], it has been held that such cannot be awarded, but in a more recent case [Baijoo Koormee and another, 5 W. R., 76], the same Court held that the compensation to be awarded in consideration of the loss suffered corresponds to damages in Civil proceedings. The Court added that the discretion allowed to the Judge is very wide. A Criminal Court, before awarding compensation, *first* should distinctly find that the complainant has suffered loss or damage, or has incurred expense in his prosecution, and *then* should assess the amount thereof, 4 W. R. 4 C. L. The grounds upon which compensation has been awarded should be distinctly stated. [Bishonath Mundul 2 W. R., 58], as well as the specific sums to be paid to each individual, if there are more complainants than one. [5 W. R. 20 C. L.]

The practice of the late Agra Sudder Court was to restrict the award of compensation.

In a case of murder [2, Agra, 366,] the Court held, "that the property of a person sentenced to death cannot be made use of for the benefit of the family of the murdered man, as the terms of S. 44 all point to the compensation of the living, and not to an allowance to be paid to the heirs of a deceased person." (See also 3 Agra 16, 184). In a case of rape, the same Court held that "pecuniary compensation cannot be awarded to the injured girl."—Nunhay Goojur, 27th April 1864.

In the Punjab, however, a contrary practice obtains, the Judicial Commissioner having held that "compensation may be awarded to persons who have suffered bodily injury; but the fine must be paid, 1*stly*, only for the benefit of the person who may have suffered loss by such offence, and not to his relations and friends; and, 2*ndly*, when the loss or damage is of a material nature. It is not essential that the loss or damage shall be loss or damage of property. It may be any special damage of a pecuniary nature that may have resulted to such person from such offence; or, in other words, it may be any material loss or damage which may be estimated in money. Thus, in the case of a labouring man dependent on the use of his limbs for his livelihood, the fracture of a limb or mutilation may justly be held to have caused such loss or damage; and it appears to be consistent with S. 44, to award to persons who have suffered hurt of the above description, compensation for loss of earnings, or for medical expenses incurred in consequence thereof. In all cases the nature and extent of the loss or damage sustained should be distinctly specified."

A Magistrate cannot order that a portion of the fine imposed by him shall be paid to the Ameen employed to hold a local enquiry in the case. It can be paid only to the person who has been injured.—Moorut Lall, 6 W. R., 93.

On appeal, a Sessions Judge has full power to award to a complainant any portion of a fine that may have been paid by the convict appellant, although the Magistrate, passing that sentence of fine, may have distinctly refused to award compensation.—Calcutta High Court 769, 1864.

"*Subject to revision.*" From Chapter XXIX. it would appear that the decisions of all Courts subordinate to the Sudder Court [S 19] are subject to revision, and, strictly speaking, even in cases in which under S. 411 there may be no appeal, payment of compensation, it would seem, should not be made to any complainant until the lapse of two months from the date of the order.

If the fine have been paid away there is no mode of compelling its refund on the reversal of the award. The payment should have been withheld until the expiry of two months. If an appeal be preferred, the Appellate Court can, under S. 421, order the sentence to be suspended as to the paying over the fine to the party injured until after the decision of the

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appeal. The Court of first instance should always inform the Appellate Court of such an order, so that payment may be suspended.—6 W. R. 4 C. L.

Imprisonment in default of payment of fine.

45. In every case punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, the Criminal Courts* shall be guided by the provisions of Sections 64 and 65 of the Indian Penal Code in awarding the period of imprisonment in default of payment of the fine. Provided that in every such case decided by a Magistrate,† the period of imprisonment awarded in default of payment of the fine shall in no case exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

Proviso.

* S. 11.

† S. 15

By S. 64, Indian Penal Code, it is enacted that, in default of payment of fine, it shall be competent to the Court to direct that an offender shall suffer imprisonment for a term, which shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of a sentence: and S. 65 enacts that, *if the offence be punishable with imprisonment as well as fine*, such imprisonment, "in default or payment of fine, shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence."

Thus, in a case of theft [S. 379, Penal Code], the powers of a Magistrate exercising full powers would be imprisonment for two years and fine of 1,000 Rupees, or, in default of payment, imprisonment for six months, *i. e.*, one-fourth of two years the maximum punishment that he could inflict. In cases regarding offences punishable with imprisonment as well as fine, a Subordinate Magistrate of the 1st class cannot, in default of payment of fine, pass a greater sentence of imprisonment than six weeks, *i. e.*, one-fourth of six months.—Phoolman Tewaree, 6 W. R. 51. Similarly, one week (*i. e.*, one-fourth of one month) would be the maximum sentence in such cases for a Subordinate Magistrate of the 2nd class.

A sentence of fine cannot fix a term within which the fine shall be paid, such being contrary to S. 68 and the subsequent Sections of the Penal Code —Calcutta High Court, 59 and 326, 1862.

The Government of Bengal (Circular 1060T, 1864) has enjoined especial caution on all Magistrates and Sub-Divisional Officers, that in all cases in which a person is sentenced to imprisonment in default of payment of fine, if the fine be paid, immediate information thereof be given to the Officer in charge of the Jail, so that the prisoner be not kept in illegal confinement.

Sentence in cases of conviction of two or more offences.

46. When a person shall be convicted at one time of two or more offences punishable under the same or different Sections of the Indian Penal Code, it shall be lawful for the Court to sentence such person for the offences of which he shall have been convicted to the several penalties prescribed by the said Code which such Court is competent to inflict; such penalties, when consisting of imprisonment, to commence the

one after the expiration of the other. It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which such Court is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court. Provided that in no case shall the person be sentenced to imprisonment for a longer period than fourteen years; and provided also, that if the case be tried by a Magistrate,* the punishment shall not in the aggregate exceed twice the extent of punishment which such Magistrate is by his ordinary jurisdiction competent to inflict.†

Proviso.

* S. 15.

† S. 22.

That is to say, a Sudder Court [S. 19], or Court of Sessions [S. 13], or an Officer acting under Act XV. of 1862, (Jud. Comr., Punjab and Oude, Cir. 72, 1865), can pass sentences of imprisonment which in the aggregate do not exceed 14 years; but the full powers of a Magistrate are limited to 4 years; of a Subordinate Magistrate, 1st class, to 12 months; and of a Subordinate Magistrate, 2nd class, to two months.

In addition to these sentences of imprisonment, a sentence of whipping may be imposed if the Court or officer be competent to pass such sentence. —3 W. R., 2 C. L.

See addenda

The restriction imposed by S. 46 operates only when sentences are passed simultaneously, or are passed on charges tried simultaneously: for S. 48 provides for cases in which a convict is already under sentence, and contains no restriction as to the measure of punishment to be awarded.—In re Puban, 7 W. R., 1.

In passing sentence under S. 46 the terms of S. 71, Penal Code, should be borne in mind: "When anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided." If the Court passing sentence under S. 46 desire to convert a sentence or sentences of imprisonment into transportation [S. 59, Penal Code], it should note that no sentence of transportation can be for less than three years, and that, to render the conversion legal, the punishment awarded for *each* offence must not be less than seven years' imprisonment.

A general sentence of transportation for two or more offences, where only one (or more) of the punishments awarded is seven years' imprisonment, is illegal.—1 W. R. 1 C. L.: Mootkee Kora, 2 W. R. 1: Krishto Soonder Deb, Ibid 5: Toonooram Malee, 3 W. R., 44: Shonaollah and another, 5 W. R. 44, &c., &c.

The Calcutta High Court has ruled [736, 1864] that, when there are in an indictment two separate offences, supported by distinct and separate evidence, a separate sentence should be passed for each offence; the punishment under the second sentence to take effect on the expiry of the first. If, however, there are two or more offences supported by the same evidence, or very nearly so, a verdict of guilty should be entered on the offence covered by the greater portion of the evidence as the gravest in the eye of the law, and a verdict, of not guilty, on the other counts. The High Court can, on appeal, if it thinks fit, find the prisoner guilty on any count of which he may have been charged and so acquitted, and reduce the punishment proportionately. And again [892, 1864] that if, after convicting a prisoner of several offences, a Sessions Judge thinks that a sentence of transportatian for life should be passed as an aggregate punishment, but that, though a *legal* sentence for any one offence, it is too *severe* for any *single* offence committed by the prisoner, he may nevertheless pass such sentence for such offence, recording

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in the other cases that no sentence has been passed in consequence of the previous sentence.

The same rule was laid down in the case of Dalapati Rao [1 Madras 83], in which the Madras High Court observed that, although the prisoner might have been properly charged in the first instance with both the criminal acts of fraudulently secreting and making away with a letter, and though either act is punishable under Act XVII. of 1854, S. 50, as an offence without evidence of the other, still, as it appeared that both acts were connected and formed substantial a part of one and the same criminal transaction, and the evidence with reference to such acts was as necessary and material on the first charge as it was on the second, the prisoner must be considered to have been tried and in peril with respect of the whole transaction as one offence on the first charge. The evidence of the making away with the letter was properly a part of the case in support of the first charge and the strongest proof of it. There was, in fact, no part of the evidence upon which the second conviction took place, which was not properly evidence on the first charge.

The most common instance in which double sentences are erroneously passed is in the cases of persons tried and convicted of theft [Ss. 379, 380, Penal Code] and house-breaking by night with intent to commit theft [S. 457.] See Calcutta High Court Circular, 1842, 6th December 1864: Choiton Bowra and others, 5 W. R., 49: Ramchurn Kairee, 6 W. R., 39: Jogon Pollee, Ibid 49: Mussahur Daood, Ibid 92, &c., &c.: Arjoon, 1 Bombay 87: Ganee Ladu, 2 Bombay 132: also 4 Agra 4.

Under the same principle it has been held that a convict cannot at the same time receive two sentences for rioting [S. 147], and being a member of an unlawful assembly [S. 142], since he could not be guilty of rioting without being a member of an unlawful assembly, Meelan Khalifa, 1 W. R. 7: nor for culpable homicide [S. 304] and being a member of an unlawful assembly, the homicide having been committed by one of the members, Rubbeeoollah, 7 W. R. 13: nor for theft [S. 379], and mischief [S. 429], Gunowree Bhooya, 6 W. R. 70: Bichuk Aheer, Ibid 5: Sahrae and others, 8 W. R. 31: [but see *contrâ* Narayan Krishna, 2 Bombay 416, in which the Bombay High Court held that, as the prisoner had cut down a tree, and then stolen it, and that thus the mischief preceded the theft, a double sentence was not illegal]; nor for kidnapping [S. 363], kidnapping to compel marriage [S. 366], and keeping in confinement a kidnapped person [S. 368], 6 W. R. 2 C. L.: nor for abetment of abduction of a woman [Ss. 109, 498], and wrongful confinement [S. 343], Issur Chunder Jogee, Suth. Rep., 1864, p. 21: nor for dacoity [S. 395], or robbery [S. 392], and receiving stolen property [S. 412], Bhoirob Seal, Suth. Rep., 1864, p. 27; Sheik Muddon Ali, 1 W. R. 27.

A man can, however, be convicted of giving false evidence (S. 193), and of making a false charge, &c. (S. 211), and be sentenced separately for each offence, since it was held that they are not cognate offences, nor are they parts of one and the same offence.—Abdool Azeez, 7 W. R. 59. Nor are separate sentences illegal for rioting armed with deadly weapons (Ss. 148, 149), and stabbing the man on whose premises the riot took place (S. 324), since they are distinct offences.—Calachand and others, 7 W. R. 60. Both these rulings seem to be opposed to the principles on which the cases above cited have been decided.

The Bombay High Court, in the case of Vinayak Trimbak (2 Bombay, 414), held that though it was irregular and contrary to S. 46 to pass one consolidated sentence for several offences, still, under S. 426, it was not competent for the Court to reverse or alter the sentence. The Calcutta High Court has followed the same practice.—6 W. R. 2, C. L.

As to whether, if a Magistrate pass two sentences under S. 46, neither of which would, taken by itself, be appealable (S. 411), an appeal will lie because the aggregate sentence is beyond the term specified in S. 411: the practice of the Calcutta High Court and the Agra Sudder Court varies. The latter has held that the sentences, though not separately appealable, would become so, whereas the Calcutta Court (Morly Sheikh, 6 W. R., 51) has ruled that they would be appealable.

Currency of sentence of escaped convicts.

47. When sentence shall be passed on an escaped convict for such escape or for any other offence, the Court may direct such sentence to take effect immediately, or after such escaped convict shall have suffered imprisonment or transportation, as the case may be, for a further period equal to that which remained unexpired of his former sentence at the time of his escape.

S. 224, Penal Code, provides the punishment for an escape or an attempt to escape made by a convict. Jurisdiction for the trial of such an offence is provided for in S. 33.

The Calcutta High Court has held [480, 1864] that S. 47 does not apply to the escape of a person from the custody in which he may have been detained when under trial. Such an escape is punishable under S. 224, Penal Code.

Judgment on offender already imprisoned under sentence for another crime.

48. When sentence shall be passed on a person already under sentence of imprisonment or transportation for another offence, the Court, if the sentence be for imprisonment, shall direct that such imprisonment shall commence at the expiration of the imprisonment or transportation to which such person shall have been previously sentenced; or, if such person shall be undergoing a sentence of imprisonment, and the sentence, on such subsequent conviction, be for transportation, the Court may direct that the sentence shall commence immediately or at the expiration of the imprisonment to which such person shall have been previously sentenced. Provided that nothing in this Section shall be held to excuse such person from any part of the punishment to which he is liable upon such former or subsequent conviction.

Proviso.

S. 48 provides for sentences on convicts *already* under sentence, whereas S. 46 provides for the passing of separate sentences on persons convicted *at one time* of two or more offences. The former places no restriction on the term of imprisonment to be imposed, but under S. 46, the aggregate term cannot exceed fourteen years, or, if the case be tried by a Magistrate, twice the extent of imprisonment which he is ordinarily competent to award.—In re Puban, 7 W. R. 1.

The warrant should accompany the prisoner, and on it shall be endorsed the extent of punishment already inflicted at the time of transfer.—Reg. (Bombay) XIII. 1827, S. 15 Cl. 2.

In ignorance that the person under trial before him was already under sentence in Jail, a Magistrate convicted and sentenced him, dating the warrant irrespective of the previous sentence. The Calcutta High Court (3 W. R. 16 C. L.) held that the Magistrate was competent to alter the date of the warrant as the alteration referred only to the time at which the sentence shall commence, and not to the sentence itself.

49. When any person is sentenced to imprisonment, it shall be lawful for the Local Government to order the removal of such person, during the period prescribed for his imprisonment, from the jail or place in which he is confined to any other jail or place of imprisonment within the jurisdiction of the same Local Government.

Local Government may order removal of a prisoner from one Jail to another.

The Governor-General in Council has, under Act XXXII. of 1867, delegated to the Chief Commissioners of Oude, the Central Provinces, and British Burmah, the powers of a Local Government described in S. 49 of this Code.—*Gazette of India* of 1867, Part II, p. 1223; and of 1868, p. 44. Act II. 1867, S. 1, confers a similar power on a Local Government with regard to persons sentenced by a Court established by Royal Charter.

50. When any person shall be sentenced to transportation, the Court passing the sentence shall not specify in its sentence the place to which such person shall be sent for the purpose of undergoing the sentence.

Place of transportation not to be specified in sentences.

The proper form of passing sentence of transportation in cases in which imprisonment can be imposed for seven years or upwards is, in accordance with S. 59, Penal Code, to sentence the convict to transportation, recording that, under that law, such transportation is awarded instead of imprisonment, simple or rigorous, as the case may be.—Calcutta High Court, Circular 9, 1866. Under the Penal Code, no offence is made expressly punishable with transportation, except for life, otherwise than by this process of commutation.

Until he is transported, the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.—S. 58, Penal Code.

Europeans and Americans are not liable to be sentenced to transportation, but to penal servitude, according to Act XXIV. of 1855, S. 56, Penal Code.

51. It shall be lawful for the Governor-General of India in Council from time to time to appoint a place or places within British India* to which persons sentenced to transportation shall be sent: and the Local Government, or some Officer duly authorized by such Government, shall give orders for the removal of such persons to the place or places so appointed.

Governor-General in Council to appoint place or places.

S. 3.

Local Government to direct removal of person sentenced to such place or places.

The Governor-General in Council has, under Act XXXII. of 1867, delegated to the Chief Commissioners of Oude, the Central Provinces, and British Burmah, the powers of a Local Government described in S. 51 of this Code.—*Gazette of India*, 1867, Part II, p. 1223; and of 1868, Part I, p. 44.

52. When sentence of transportation shall be passed on a person already undergoing transportation under a sentence previously passed for another offence, it shall not be necessary for the Local Government to order the removal of such person from the place in which he is so undergoing transportation.

Execution of sentences of transportation passed on persons already undergoing transportation under a previous sentence.

53. When any person shall be sentenced to death, the sentence shall direct that such person be hanged by the neck till he is dead.

Sentence of death.

The Sessions Judge should fix the time and place for carrying out sentences of death, and should give orders regarding the disposal of the corpses of executed convicts.—Calcutta High Court, 1863.

Capital sentences are passed by Sessions Judges subject to confirmation by the Sudder (High) Court, to whom the proceedings are referred (Ss. 22, 380). The procedure to be followed by that Court as a Court of Reference is laid down in Ss. 398 and 401, while Ss. 383 and 385 declare how the orders passed should be carried out.

54. When any person has been sentenced to punishment for an offence, the Governor-General of India in Council, or the local Government, may, at any time, without conditions, or upon any conditions which such person shall accept, remit the whole or any part of the punishment to which he shall have been sentenced.

The Governor-General in Council or the Local Government may remit a punishment.

Ss. 54 and 55 of the Indian Penal Code confer similar powers on the Government of India, or the Government of the place in which the offender shall have been sentenced with respect to the commutation [S. 54] of a sentence of death to any other punishment under that Code, and [S. 55] of a sentence of transportation for life to imprisonment, rigorous or simple, for a term not exceeding fourteen years. This Section of the Criminal Procedure, however, confers on the Governor-General of India in Council and Local Government authority to remit the whole or any part of the [*i. e., any*] punishment to which any person shall have been sentenced. This would provide for the remission in whole or in part of sentences of transportation for terms [S. 59, Penal Code] of penal servitude [S. 56, and Act XXIV. of 1855], of forfeiture of property [S. 62], of fine [S. 53], of solitary confinement [Ss. 73, 74], and of whipping [Act VI. of 1864], as well as of sentences of death and transportation for life.

55. A person who has once been tried for an offence, and convicted or acquitted of such offence, shall not be liable to be tried again for the same offence. Provided that any person may be tried for the offence of culpable homicide and punished for that offence, notwithstanding he may have been tried and punished for the act which caused the death, if at the time of his conviction for the said act

Party tried upon formal charge not liable to renewed prosecution.

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CH. III. S. 55.

death shall not have resulted, or shall not have been known by the Court which passed sentence to have resulted.

Thus, if a person were tried and convicted under S. 307, Penal Code, of an attempt to commit murder, or, under S. 308, of an attempt to commit culpable homicide, and the person injured were to die, after the passing of the sentence, from the effects of the injuries received, the offender might be tried and convicted of murder or culpable homicide, but it is indispensable that the death should be clearly and distinctly connected with the act of violence.—Mahomed Hossein, Suth. Rep. 1864, p. 31.

It is essential to a plea of *autrefois convict* or *autrefois acquit* that the Court holding the trial should have had competent jurisdiction (Mathoora Prashad Panday and others, 2 W. R., 10) ; also that the prior conviction or acquittal should have been for the same identical offence; but a former conviction or acquittal of a higher offence is a bar to a prosecution for the *same act* charged in a lesser offence, if, in a trial for the former, the accused might have been legally convicted of the latter. Thus the acquittal of a person charged with theft was held to be a bar to his being prosecuted for abetment of theft. 3. W. R., 9 C. L. The reversal of a conviction and sentence on the ground of misdirection to the Jury is no bar to a fresh trial.—Kali Churn Gangooly, 7 W. R., 2.

The Calcutta High Court, in the case of Dwarkanath Dutt (7 W. R., 15), has discussed the interpretation to be put on S. 55. Owing to the importance of the subject, the judgment is given *in extenso* :—

"*Mr. Justice Markby.*—In this case I most unfeignedly regret that I am unable to concur in the judgment of the Chief Justice and Mr. Justice Kemp, and it is scarcely necessary for me to say with how much diffidence I give an opinion contrary to theirs. The short history of this case is, that in the year 1863, a person of the name of Gray, of the Military Orphan Asylum, brought a suit against the prisoner to recover possession of certain land and godowns standing thereon. In that suit the prisoner filed two documents, both dated the 13th August 1858, and both purporting to have been granted to the prisoner by Gray on behalf of the Asylum, in respect of different portions of the land in dispute. The two pottahs were precisely similar in every respect, except the parcels of land to which they related.

"The Sudder Ameen who tried this suit refused to receive the documents in evidence, because they were not produced till after the time appointed by him for that purpose. But at the request of Gray the documents were retained on the file, and Gray subsequently asked and obtained permission from the Sudder Ameen to take Criminal proceedings against the prisoner for attempting to use, in evidence, two documents which Gray alleged to be forged.

"These proceedings were commenced on the 29th December, when Gray laid a charge before a Magistrate against the prisoner under S. 196, and also under S. 471 of the Indian Penal Code. On this occasion both documents were produced, and marked A and B respectively. The charge was made, and the evidence given, in respect of *both* documents indiscriminately, and eventually the prisoner was committed on a charge containing three counts. *First*, for making a false document, 'to wit, the exhibit A,' under S. 465 ; *secondly*, with fraudulently and dishonestly using, as genuine, a document which he knew to be forged, 'to wit, exhibit A,' under S. 471 ; *thirdly*, with corruptly intending to use, as true or genuine evidence, a document which he knew to be false and fabricated, 'to wit, exhibit A,' under S. 196.

"The 'exhibit A' mentioned in these there counts is *not* that described in the charge now under consideration, but the document so marked by the Magistrate. The document described in the present charge is the one which, in the investigation before the Magistrate, was marked B.

"In February 1864, the prisoner was tried on a charge founded on the one on which he had been committed, and only differing from it in this respect, that the document in the first count mentioned instead of being described as 'exhibit A' was described as 'purporting to be a pottah granted by Mr.

Charles James Gray, as Secretary to the Military Orphan Society, to Dwarkanath Dutt for Pcottah 12½ gundahs of land, with a godown standing thereon, and dated 13th August, 1858,' and in the two following counts the document was described by reference to the first count. Notwithstanding the form of the charge, evidence was given throughout indiscriminately with reference to both documents.

"In charging the Jury, the Sessions Judge treated the charge as one of forging document A only; and, when describing the offence, spoke of that document only; but when commenting on this evidence, he referred to both documents, and, after remarking on the striking resemblance between the alleged forgery and the admitted genuine signatures of Mr. Gray, the Judge proceeds thus:—'The main point on which the prosecutor relies in regard to this resemblance is that the signature on this document, and on another document, which was also filed by the prisoner, *i. e.*, in the Civil suit (the document B) are so exactly coincident in size, and in every other particular, as to show that one or both must be mere imitations. It is physically impossible, it is said, or at least exceedingly improbable, that any two signatures of the same person should so exactly correspond in every particular; and the improbability is still further increased when it is remembered that both these documents were said to have been signed at the same time.' What the Counsel for the prosecution had contended, and which the Judge here alludes to, was that both signatures, being so much alike, must have been traced from a third signature of Gray's which was genuine, and which prisoner was proved to have had in his possession. The result of this trial was that the prisoner was acquitted.

"On the 16th May 1866, a second charge was laid against the prisoner by Gray, and on the charge being inquired into, the evidence was mainly addressed to the charges of forging and using document B, although the other document A, with respect to which the prisoner had been tried and acquitted, was frequently alluded to.

"The prisoner was ultimately again committed on three charges with respect to document B, precisely similar to the charges on which he had been previously acquitted with respect to document A.

"The trial on these charges also took place before Mr. Beaufort, in July last. The vakeels who appeared for the prisoner objected to the trial proceeding, on the ground that the prisoner had been already tried and acquitted on these charges. They insisted on the fact that, throughout the former proceedings, both documents had been referred to; and also that, as both pottahs were filed at the same time in the Court of the Sudder Ameen, the using of both constituted one act only; and as he was charged on the former trial with using one of these pottahs, knowing it to be forged, he could not be again tried for using the other.

"The objection was overruled, and the prisoner was convicted on all three charges. The prisoner has appealed, and has again raised this objection. The point was originally argued before Mr. Justice Kemp and myself, and has been again argued before us sitting with the Chief Justice.

"The question is whether the prisoner had been previously tried for these offences, and acquitted for these offences within the meaning of S. 55 of the Code of Criminal Procedure; and for convenience I will consider the forgery first—

"Whether or not the prisoner has been previously tried for the offence of forgery, now under consideration, appears to me to depend on whether he is to be considered upon the whole evidence, in both cases, as having committed two offences of forgery or one. I am not aware, nor did I hear in the course of the argument, of any general principle by which it can be at once recognised whether or not, in contemplation of law, a transaction constitutes one offence or several offences. It was, indeed, suggested that the singleness of the offence depended on the singleness of the act done by the offender.

"But I think this test manifestly fails. For, on the one hand, it appears to me perfectly possible that a man may by one act commit several offences, as where he discharges a missile into a crowd, and wounds several persons; and, on the other hand, that a man may by several acts commit one offence as

where he inflicts several rapidly successive blows on one person, which constitute, I believe it will be admitted, but one assault.

"Moreover, it appears to me that there are a large number of cases in which it is entirely at the option of those who conduct the prosecution whether they will treat them as one offence or several. Acts closely connected together, or even one act producing several distinct consequences, may be made the foundation of several entirely distinct charges, or distinct counts in the same charge, but always with this qualification, that the evidence shall be confined to the particular act charged.

"In the case under consideration, I have no hesitation in saying that the forgery of these two pottahs might have been made the foundation of two separate counts in one charge, or even of two perfectly distinct prosecutions, had those who conducted the prosecution chosen to keep them distinct.

"But the course taken in this prosecution was this. Before the Magistrate on the occasion of the charge being laid in the first instance, the whole case as to the forgery of both pottahs was gone into. The prisoner was then committed (whether inadvertently or not is not material) for the forgery of one only. But evidence, notwithstanding, was given at the trial that both pottahs were forged; and, as has already been seen, the theory on which the prosecution principally relied was, that both had been copied from a third genuine signature, which was produced, and which had been in the prisoner's possession. This would be perfectly legal if these two forgeries were so connected together as to form but one offence, and entirely in accordance with the practice in larceny, assault, and other offences, when it frequently occurs that much more is proved than is stated in the indictment. But if it was intended to treat these two forgeries as distinct, then it was wholly illegal to give this evidence as to the second forgery.

"At the second trial also, evidence was given as to the forgery of both pottahs, and the same theory as to the execution of the forgery was laid before the Jury,—a course which was again illegal, if the offences were distinct.

"It is said that the question now to be decided is not whether or not evidence was improperly admitted at the first or the second trial, and that any legal proceeding on the part of the prosecution cannot change the nature of the offence. But this argument appears to me to be fallacious. As I have already said, I consider this to be one of those transactions which may be treated as constituting one offence or two offences at the option of those who conduct the prosecution, and though whatever takes place subsequently, the history of the transaction remains the same. I think the unity of the offence has, in the contemplation of law, been irrevocably determined by the course taken by the prosecution on the first trial. For these reasons, it appears to me that the prisoner in this case has, in contemplation of law, committed but one offence of forgery only; that he has already been tried and acquitted for that offence within the meaning of S. 55 of the Code of Criminal Procedure; and that the present conviction is therefore illegal.

"For similar reasons it appears to me that the convictions on the two other counts in the charge are illegal also.

"The result which I have come to appears to me to be not only that which is in accordance with the law, but also to be that which is most in accordance with the true interests of justice: for, while it leaves to the prosecution a latitude of choice, often very useful, as to the course to be taken in the proceedings against an offender, it prevents, that which it appears to me most desirable to prevent, conflicting verdicts of Juries upon the same evidence.

"When the case was before Mr. Justice Kemp and myself in the first instance, two other objections were taken on behalf of the prisoner: the first was that he had not been allowed sufficient facilities for summoning his witnesses, and that objection we disposed of that time, being of opinion that there was no ground of law which the prisoner could raise on appeal against the verdict of a Jury. The other objection was that the Judge was wrong in rejecting as evidence the deposition which a witness for the prisoner had made at a former trial, and which, as was alleged before us, was tendered on the ground that this witness was dead when the second trial took place. This point was argued before Mr. Justice Kemp and myself, on the assumption

that the evidence had been properly tendered at the trial, and we reserved the question of its admissibility for further consideration, together with the question arising on S. 55 of the Code of Criminal Procedure. Upon the second argument, the Judge's notes were searched, and then it appeared that there was no note of this deposition ever having been tendered at all. None of the advocates employed at the trial, either for the prosecution or the defence, were present on either argument before us, nor was any affidavit filed as to what took place at the trial.

"On the other hand, it is clear, from the Judge's own report of his charge to the Jury, that *some* application for the admission of depositions was made in the course of the trial by the advocate for the prisoner, but no note of any such application appears to have been taken. The language used in the charge, however, rather appears to refer to an application to admit the depositions of the absent witnesses, than of the one who was dead. It is extremely unsatisfactory to me to have to come to a decision on such materials; but on the whole I do not feel justified in saying that this evidence was tendered. The point, therefore, as to its admissibility does not arise."

"*The Chief Justice.*—I regret that I am obliged to differ from my Hon'ble and learned colleague Mr. Justice Markby. Were it not for the knowledge that we possess I should have considered the present case a very clear one. It is clear that, under the indictment for forging exhibit A, the prisoner could not have been either convicted or acquitted of forging both exhibits. Having been charged with the commission of one offence only, he could not be either convicted or acquitted of two separate and distinct offences.

"If, under the charge on the first trial, the prisoner had been acquited of forging exhibit A, and had been found guilty of forging exhibit B, and sentenced to punishment for the latter offence, it is clear that the conviction could not have been supported, inasmuch as the charge against the prisoner was confined to the forgery of A. In like manner, if the prisoner had been found guilty of forging A, and also of forging B, and had been sentenced to one punishment in respect of A, and to another punishment in respect of B, the sentence in respect of B must have been reversed, inasmuch as the charge did not extend to the forgery of B.

"So if, on the first trial, the prisoner had been convicted of forging exhibit A, and sentenced to punishment for that offence, such former conviction would not have been a bar to the charge of forging B; and if not, I cannot see how an acquittal of the forgery of B, under the charge of forging A, even if the defendant had been expressly acquitted of forging B, could have been set up as a bar to the charge of forging B, for a conviction and acquittal both fall under the same category in S. 55 of the Code of Criminal Procedure. In the present case, however, there was no express acquittal in respect of the forgery of B. It is only to be inferred from the acquittal of the forgery of A, in consequence of evidence having been adduced, from which it might have been found that the signatures on A and B had both been traced from a genuine signature of the same person, there is nothing, however, conclusive in that finding. It is quite consistent with the evidence that B was forged, though A may have been genuine. How can the Court, which tries the prisoner for forging B, ascertain what credence was given by the Jury to the evidence on the first trial? They might have thought that the signatures to A and B were not so much alike as was supposed by the witnesses. They might have thought that the two genuine signatures did not resemble the signature with which they were compared. In that case it would have been wholly unnecessary for them to consider whether B was a forgery or not: and, indeed, it would have been the duty of the Judge, if they had delivered a verdict with respect to B, as well as with respect to A, to tell them that they were not sworn to give a verdict in respect of B. In this case the Judge was the same on both trials; but there might have been a different Judge as well as a different Jury in the second trial.

"Exhibit A and exhibit B relate to different portions of land. The pottahs were as separate and distinct as to different persons, or as to bonds; one for Rs. 100, and the other for Rs. 10,000. It is stated by my Hon'ble colleague that a man may by one act commit several offences, as, for instance,

where, by the discharge of a missile into a crowd, he kills several persons. It is not necessary for the present case to go to that extent, or to express any opinion upon that point. The forging of two different instruments cannot be effected by a single act, though two men may be killed by one shot. It appears to me to be clear that the forgery of each of the documents constituted a distinct offence, and, if so, the two offences could not be reduced to one offence by the course which the prosecutor thought fit to adopt on the trial for one of them. Whether the prisoner committed one offence, or two offences, must be determined with reference to the facts as they existed at the time when the offences are alleged to have been committed. To render a formal acquittal or conviction a defence on a second trial, the offence must, according to S. *55*, be the same offence. It would be no answer on a trial for one to say that the prisoner had been acquitted of another on a trial at which evidence was given respecting both, and which, if believed, would have proved the prisoner guilty of both. The words of S. *55* are,—'A person who has been tried for an offence, and convicted or acquitted of such offence, shall not be liable to be tried again for the same offence.' The Jury were not empannelled or sworn to try the prisoner in respect of B, and he was never tried for the offence of forging B. The law here is similar to the law in England and America, and therefore it may be as well to refer to some decisions in those countries as throwing light upon the subject now under consideration.

"In England it is necessary that the crime charged be precisely the same as that of which the prisoner was acquitted, and so strictly does the rule prevail, that it was held by all the Judges that an acquittal upon a trial for burglariously breaking and entering a dwelling-house, and stealing goods therein was no bar to a subsequent indictment for burglariously breaking and entering the dwelling-house with intent to steal the goods, though both charges related to the same breaking and entering.

"Mr. Justice Baker, in delivering the opinion of the Judges, remarked that if the crimes were so distinct that evidence of the one would not support the other, it would be as inconsistent with reason, as it would be repugnant to the rules of law, to say that the offences were so far the same, that an acquittal of the one would be a bar to the prosecution for the other. The question in these cases is, whether the prisoner could have been convicted on the first trial of the offence charged or the second trial, and whether he was ever in jeopardy for that offence. In Kamp's case, 4 Coke's Reports, 44, it was held that, where a former acquittal or conviction is spoken of as a good plea, a lawful acquittal or conviction is intended, and that if the former indictment was not sufficient, the acquittal or conviction would not be a lawful one. When it is said that the offences must be the same, it is merely meant that they must be in reality the same, and therefore a defendant may plead his previous acquittal though the two charges differ in immaterial circumstances; for it would be absurd to suppose that, by varying the day, place, or any other allegation, the precise accuracy of which is not material, the prosecutor could change the rights of the defendant, and subject him to a second trial for what in reality was the same offence. Thus if a prisoner be indicted for murder, alleged to have been committed on a certain day, and acquitted, and afterwards be charged with killing the same person on a different day, he may plead the former acquittal in bar notwithstanding this difference: for the day stated in the indictment on the former trial was not material.—(See Chitty, Criminal Law, 1st vol., page 452, and the cases there cited).

"The following are instances of cases in which the offences have been held to be different:—

"It is laid down in Hale's Pleas of the Crown that if A commit a burglary, and at the same time steal goods out of a house, and he be indicted for stealing the goods and acquitted, he may be afterwards indicted for the burglary notwithstanding the acquittal, and, *converse*, if indicted for the burglary and acquitted, yet he may be indicted for the larceny; for they are several offences, though committed at the same time, and burglary may be where there is no larceny, and larceny may be where there is no burglary. So it has happened that a man, acquitted for stealing a horse, has yet been arraigned and convicted

for stealing the saddle, though both were done at the same time.—Hale's Pleas of the Crown, 2nd vol., page 245.

"Wherever the offences charged in the two indictments are capable of being identified as the same offence, it is a question of fact whether the offences are the same, and the identity must be proved; but where a plea of *autrefois acquit* upon its face shows that the offences are legally distinct and incapable of identification, the Court may determine the question as a matter of law.—(See the case of *King* vs. *Vaudecom and another*, above cited). If a prisoner should be charged with murdering A, and should plead a former acquittal, and prove that he had been acquitted upon a charge of murdering B, evidence would be admissible to prove that the two charges related to the same person and to the same killing; and it might be shown that the person referred to in the former indictment by the name of A was in fact the same person as the one referred to in the second charge by the name of B; for the same person might be known by two different names. But if a person were indicted for murdering A by shooting him, and also for murdering B by poisoning him, and it should be proved that he killed both A and B, a former acquittal upon a charge of murdering A would be no bar to his trial on the subsequent charge so far as it related to the murder of B, even though it should be shown that upon the former trial evidence had been erroneously admitted to prove that he murdered B, for the purpose of showing that he was a man of a wicked and evil disposition, and that it was, therefore, probable that he murdered A. So upon a charge of forging a bond for 10,000 Rs., I apprehend it would be no answer to show that he had been formerly tried and acquitted of forging a bond for 10 Rs., if it should appear that the former trial related to a bond for 10 Rs., even though it should be proved that the bond for 10,000 Rs., the subject of the second trial, had been adduced in evidence on the former trial for the purpose of showing that the signature to the bond for 10 Rs., and the signature to the bond for 10,000 Rs., were so exactly alike, and so nearly resembled a genuine signature of the obligor, that they were both probably forged by tracing the signature to each of them over the same genuine signature.

"It appears to me that it would be highly inconsistent with justice to hold that the forgery of the two bonds was one and the same offence, and the acquittal as to the bond for 10 Rs. was conclusive in favour of the prisoner for all purposes connected with the administration of the Criminal Law, that he had not been guilty of any offence as regards the bond for 10,000 Rupees.

"Suppose A should sue B in one suit upon two bonds: one for 100 Rs., and the other for 500 Rs., and should afterwards sue him on a bond of later date for a lakh of Rs., and B should admit that the bond for 100 Rs. was genuine, and set up as a defence to the other bonds that they were forgeries; and suppose that upon the trial, and the suit upon the 500 Rs. bond, B should cause the bond for a lakh to be produced for the purpose of showing that both bonds were forgeries, and that the signatures to them were so precisely alike, and so similar to the signature on the admitted bond for 100 Rs., that they must have been traced over that bond. Suppose, further, that the bond for 500 Rs. should be held to be genuine and not a forgery, and that a decree should be given against B for the amount, could it be contended for a moment that the decree holding the bond for 500 Rs. to be genuine would be conclusive in favor of A and against B, that the bond for a lakh in the second suit was also genuine, and not a forgery, merely because upon evidence applicable alike to the bond for 500 Rs. and the bond for a lakh, it has been found in a former suit between A and B that the bond for 500 Rs. was genuine, and not a forgery. If the decree in the first Civil suit, that the bond for 500 Rs. was not a forgery, would not be conclusive in the second suit in favour of A., that the bond for a lakh was not a forgery, why should a judgment of acquittal in favor of A, upon an indictment for forging the bond for 500 Rs., be conclusive evidence in his favor upon a subsequent indictment against him for forging the bond for a lakh that he had not forged that bond. It is contended by my Hon'ble colleague in the present case that to hold the former

acquittal an answer to the charge of forging the second pottah is not only in accordance with law, but is also in accordance with the true interests of justice, and that it would prevent that which it is most desirable to prevent, *viz.*, conflicting verdicts of jurors upon the same evidence. Would it not be equally desirable, in the case which I have supposed, to hold that the judgment given as to the bond for 500 Rs. in the first suit was binding in the second suit, upon the bond for a lakh, lest upon the same evidence the same Judge should hold the first bond to be genuine, and the second a forgery?

"Or, suppose that in the case of the two bonds, the bond for 500 Rs. should be held to be a forgery, and the suit upon it should be dismissed, would it follow that the suit upon the second bond for a lakh ought to be dismissed, lest there should be conflicting judgments of the same Judge upon the same evidence? Suppose, in the present case, pottah A had been held genuine in a Civil suit, and in a subsequent suit relating to the bond in pottah B, precisely the same evidence should be given as that which had been adduced in the suit relating to pottah A, could it be held that the decision in the first suit would be conclusive in the second suit, that pottah B was genuine, lest conflicting judgments should be given upon the same evidence by the same Judge?

"It appears to me that the forgery of A and the forgery of B constituted two distinct offences, that the acquittal of the prisoner under the charge of forging A was not an acquittal of the same offence as that which formed the subject of the second charge, *viz.*, the forgery of B, notwithstanding evidence was given upon the first trial tending to show that both pottahs were forgeries.

"The truth is, that when a former conviction or acquittal is set up as a bar to a subsequent trial, the Court before which the second trial is held has nothing to do with the evidence given on the former trial, except for the purpose of ascertaining whether the offence which formed the subject of the first trial, is the same as that which forms the subject of the second charge. If the offence is the same, the former conviction or acquittal is a bar to the second trial, whether the second Court considers that the former conviction or acquittal was warranted by the evidence given on the first trial or not. If the offence is not the same, the former conviction or acquittal is no bar to the trial upon the second charge, notwithstanding the evidence given in the two cases is the same, and the Court, whether the same as that which tried the prisoner for the first offence, or a different Court, is bound to apply its own judgment to the evidence before it, and to give a verdict according to its own conviction upon the evidence adduced. It appears to me that two distinct offences cannot be converted into one such offence by reason of any evidence which the prosecutor may think fit to adduce upon the trial for one of them. For instance, upon an indictment for murdering A, it would be no answer that the prisoner had been acquitted upon a trial for murdering B, unless it could be shown that the two charges related to the same person under different names. If it were shown that A and B were two different persons, as for instance that A was a man, and that B was a woman, no amount of proof as to what evidence was given on the trial for the murder of A could show that the offences were one and the same, so as to render the acquittal as to A a bar to the charge of murdering B.

"As to the second point, there is nothing to show that the deposition of the deceased witness was offered in evidence on behalf of the prisoner on the second trial. Suppose it could be proved that the evidence of the deceased witness was false, and that the prisoner knew it to be false, the prisoner could not in consequence of anything that appears to have been done on the second trial be convicted under Section 196 of the Penal Code of attempting to use on the second trial the deposition of the deceased witness as true, knowing it to be false. If he had tendered the deposition on the second trial with the knowledge that it was false, he would have been liable to punishment under the Section to which I have referred.

"The Judge was not bound of his own accord to refer to the deposition as evidence merely, because it was annexed to the record which was put in evidence for the purpose of proving a former acquittal.

It appears to me that there are no grounds for reversing the conviction, or sending the case back for a new trial, and I am of opinion that the conviction and sentence ought to be affirmed.

Mr. Justice F. B. Kemp.—The appellant, through his pleader, contends that his conviction by the Sessions Judge of the 24-Pergunnahs is illegal, and ought to be set aside under the provisions of S. 55 of the Code of Criminal Procedure.

The said Section is to the following effect:—"That a person who has once been tried for an offence and convicted or acquitted of such offence, shall not be liable to be tried again for the same offence."

In short, the prisoner's plea is "*Autrefois acquit.*"

This plea is grounded on the maxim that no man is to be brought into jeopardy more than once for the same offence.

The prisoner in 1864 was arraigned on an indictment of forging an instrument purporting to be a pottah conveying to him a tenure in perpetuity in a parcel of land situated in the Orphangunge at Kidderpore. The metes and boundaries of the land were described in this pottah, and the jumma was specified. The date of the pottah, with the forgery of which the prisoner was charged, was given in the indictment. The prisoner pleaded to a formal and precise charge, a majority of the Jury acquitted him of the offence of forging the pottah, which was clearly identified by the indictment.

In the present trial, which took place in 1866, he is charged with the offence of forging another, and quite a distinct pottah for a piece of land which is not identical with the land which was the subject matter of the former charge. He has been found guilty by the unanimous verdict of the Jury; and I am of opinion that the plea of "*Autrefois acquit*" is inadmissible, inasmuch as the prisoner has clearly not been brought into jeopardy more than once for the same offence.

The above was the judgment that I proposed delivering in this case.

After hearing the case argued before a third learned Judge, I have only to add that I entirely concur in the judgment delivered by the learned Chief Justice.

A person charged with criminal breach of trust may be found guilty of theft.

56. If upon the trial of any person charged with the offence of criminal breach of trust under Section 405 of the Indian Penal Code, or of criminal breach of trust as a carrier, wharfinger or warehouse-keeper under Section 407 of the said Code, it shall be proved that such person took the property in question in any such manner as to amount to the offence of theft under Section 378 of the said Code, he shall not be entitled to be acquitted, but the Court, or the Jury in a case tried by Jury, shall be at liberty to find that such person is not guilty of the offence charged, but is guilty of the said offence under the said Section 378, and thereupon such person shall be liable to be punished in the same manner as if he had been found guilty upon a charge under the said Section 378.

S. 423 declares that no finding of criminal breach of trust under S. 405 or S. 407, Penal Code, shall be liable to be reversed or altered, because the offence proved was theft. If there should be doubt in the mind of any Court regarding the offence committed, the law [S. 381] permits an alternative finding in the form described in S. 382, cl. 5 and 11; but S. 72, Penal Code, declares that the punishment in such

a case shall be that provided for the offence for which the lowest punishment is provided, if the same punishment is not provided for all.

The word *Court* used in S. 56 would refer to a Court of Session, or a Magistrate with full powers, or a Sub-Magistrate of the 1st class. See Schedule to Ss. 379, 406, 407.

A person charged with criminal breach of trust as a servant may be found guilty of theft, or of theft as a servant.

57. If, upon the trial of any person charged with the offence of criminal breach of trust as a clerk or servant under Section 408 of the Indian Penal Code, it shall be proved that such person took the property in question in any such manner as to amount to the offence of theft under Section 378 of the said Code, or the offence of theft as a clerk or servant of property in possession of his master under Section 381 of the said Code, he shall not be entitled to be acquitted, but the Court, or the Jury in a case tried by Jury, shall be at liberty to find that such person is not guilty of the offence charged, but is guilty of the said offence under the said Section 378, or Section 381, as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been found guilty upon a charge under such Section.

See note to S. 56, which applies to this Section *mutatis mutandis.*

A person charged with theft may be found guilty of misappropriation or breach of trust.

58. If upon the trial of any person charged with the offence of theft under Section 378 of the Indian Penal Code, or the offence of theft in a building, tent or vessel under Section 380 of the said Code, it shall be proved that he took the property in question in any such manner as to amount to the offence of dishonest misappropriation of property under Section 403 of the said Code, or the offence of criminal breach of trust under Section 405 of the said Code, he shall not be entitled to be acquitted, but the Court, or the Jury in a case tried by Jury, shall be at liberty to find that such person is not guilty of the offence charged, but is guilty of the said offence under the said Section 403, or Section 405, as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been found guilty upon a charge under such Section.

S. 424 provides that no finding of theft [S. 378, Penal Code], or theft in a building, &c. [S. 380], shall be liable to be reversed or altered, because the offence proved by the evidence was dishonest misappropriation of property [S. 403], or criminal breach of trust [S. 405]. If there is any doubt in the

mind of the Court as to the offence committed, the law [S. 381] permits an alternative finding in the forms described in S. 382, c. 5 and 11; but S. 72, Penal Code, declares that the punishment in such a case shall be that provided for the offence for which the lowest punishment is provided, if the same punishment is not provided for all.

A person charged with theft as a servant may be found guilty of misappropriation.

59. If upon the trial of any person charged with the offence of theft as a clerk or servant of property in the possession of his master, under Section 381 of the Indian Penal Code, it shall be proved that he took the property in question in any such manner as to amount to the offence of dishonest misappropriation of property under Section 403 of the said Code, or the offence of dishonest misappropriation of property possessed by a deceased person at the time of his death under Section 404 of the said Code, or of such dishonest misappropriation under the said Section 404, the offender being at the time of the person's decease employed by him as a clerk or servant, or the offence of criminal breach of trust under Section 405 of the said Code, or the offence of criminal breach of trust as a clerk or servant under Section 408 of the said Code, he shall not be entitled to be acquitted, but the Court, or the Jury in a case tried by Jury, shall be at liberty to find that such person is not guilty of the offence charged, but is guilty of the offence under the said Section 403, Section 404, Section 405, or Section 408, as the case may be; and thereupon such person shall be liable to be punished in the same manner as if he had been found guilty upon a charge under such Section.

See note to S. 58, which applies to this Section *mutatis mutandis*.

No person charged under the last four Sections, and found guilty, liable to be charged again.

60. No person charged and tried for an offence under any Section of the Indian Penal Code in the last four Sections of this Act mentioned, and found guilty of another offence under the provisions of any other of the said Sections of the Indian Penal Code, shall be liable to be afterwards prosecuted upon the same facts under the Section under which he was charged, or under the Section under which he was found guilty.

An amplification of the provision of S. 55.

Levy of fines.

61. In every case in which an offender is sentenced to a fine, it shall be competent to the Court which sentences such offender,

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whether or not the offence be punishable with fine only, and whether or not the sentence direct that, in default of payment of the fine, the offender shall suffer imprisonment, to issue a warrant for the levy of the amount by distress and sale of any moveable* property belonging to the offender which may be found within the jurisdiction of the Magistrate† of the District.

* S. 6.

† Ss. 14 18.

S. 64, Penal Code, provides for sentences of imprisonment in default of payment of fine; S. 65 limits such an alternative sentence to one-fourth of the term of imprisonment which is the maximum fixed for the offence, *if the offence be punishable with imprisonment as well as fine;* (S. 45, Criminal Procedure, applies this restrictively to the powers exercised by the various grades of Magistrates); S. 66, Indian Penal Code, declares that such imprisonment may be of any description to which the offender may have been sentenced for the offence: by S. 67, *if the offence be punishable with fine only*, the term of such imprisonment is limited by the amount of fine imposed, according to a certain scale therein specified, which limits the maximum of imprisonment to six months; S. 68 declares that such imprisonment shall terminate whenever the fine is paid or levied by process of law: and by S. 69, the payment or satisfaction by levy of a portion of the fine relieves the convict from undergoing the proportionate term of imprisonment.

These Sections contain the law regarding the alternative imprisonment to be undergone in default of payment or satisfaction by levy of a fine imposed under the Indian Penal Code. S. 70, Penal Code, however, is especially important with reference to S. 61, Criminal Procedure: it declares that "the fine, or any portion thereof, which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under sentence, the offender be liable to imprisonment for a longer period than six years then at any time previous to the expiration of that period; and the death of the offender does not discharge from liability any property, which would, after his death, be legally liable for his debts.

It must, however, be borne in mind that owing to the restrictive terms of S. 40, Penal Code, the provisions of S. 70 apply only to offences made punishable by *that* Code.—4 W. R. 7 C. L.

There should be no delay in the levy of a fine. It should not be deferred until the result of any appeal that the convict may make be known; nor can the Appellate Court order a Lower Court to abstain from issuing the warrant for the levy of a fine.—2 W. R., 13 C. L.

The warrant for the levy of a fine should be directed to a Police Officer, and should fix a time for the sale and for the return of the warrant. If no one claims the property distrained, the Police have the power of selling it within the time that should be specified in the warrant without any previous reference to the Magistrate: if a claimant comes forward, then the ownership of the property distrained must be determined by the Magistrate, and not by the Police. If, at any time subsequent to the return to the warrant and within the period of six years from the passing of the sentence, the fine or any part thereof remains unpaid (S. 70, Penal Code), and the Magistrate, from information gained in any way, has reason to think that any moveable property belonging to the offender is within his juridiction, he should issue a fresh warrant for the attachment and sale of that property within a specified period, returnable within a certain time.—Calcutta High Court, 8, 1864.

A Magistrate, in sentencing an offender to fine, omitted to order the issue of a warrant for the levy of the amount by distress and sale. The Calcutta High Court (4 Muddoo Soodun Dey, 3 W. R., 61) held, that his successor or the Magistrate of the District, may issue such warrant, it being immaterial whether the Officer who imposed the fine issued any special direction regarding its levy. Similarly with regard to a Sessions Judge [3 W. R. 2 C. L.]. If an

adverse title be set up to property attached by order of a Magistrate for the levy of a fine, the Magistrate should enquire into the matter [Calcutta High Court, 435, 1864.]

The Calcutta and Punjab Courts have distinctly ruled that a fine can be levied only on the moveable property of the offender that may be found within the jurisdiction of the Magistrate of the District in which he was tried and sentenced. The former Court has also pointed out (4 W. R. 6 C. L.) that this restriction applies only during the life-time of the offender, but that *after his death* within six years from the date of passing of the sentence, or, if the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period, the fine may, under S. 70, Penal Code, be recovered from *any* property which may be legally liable for his debts. In the Punjab, the employment of the Police in the realisation of fines by distress and sale of property has been forbidden. The transaction at this period has been declared to occupy the position of a judgment-debt. Agricultural implements, though not exempt from sale, should not be attached, unless it be unavoidable.

Magistrate may issue orders to prevent obstructions, &c.

62. It shall be lawful for any Magistrate,* by a written order, to direct any person to abstain from a certain act, or to take certain order with certain property in his possession, or under his management, whenever such Magistrate* shall consider that such direction is likely to prevent, or tends to prevent, obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, or is likely to prevent, or tends to prevent, danger to human life, health, or safety, or is likely to prevent, or tends to prevent, a riot† or an affray.‡

* S. 15.

† S. 146 I. P. C.
‡ S. 159 I. P. C.

The Agra Sudder Court (Cir. 15, 1865,) and also Jud. Com., Oude, (69 of 1865) have declared that "whenever any act or proceeding which a Magistrate deems it necessary to prohibit or direct falls within the category defined in S. 308 Chapter xx, he shall be bound to follow the procedure enjoined thereby, even though such act or proceeding may appear to fall within the terms of S. 62;" but in the case of Choonee Lall (16 Jan., 1867), the Agra High Court declared their opinion that S. 62 was intended to provide a Magistrate with power to put an immediate termination to the continuance of acts, nuisances, &c., &c., where speedy action is required, but if the nuisance is one, from which no immediate danger is apprehended, he ought to proceed under Chapter xx. The Magistrate has discretion to adopt either procedure. It is to be noticed that any Magistrate may give an order under S. 62, but only the Magistrate of a District or division of a District can do so under Chapter xx, S. 308. Having once commenced proceedings under S. 308, a Magistrate is not competent to take up the matter under S. 62. He is bound to proceed under Chapter xx.—Pitti Singh, 8 W. R., 37.

If a Magistrate should think that an order from him will tend to prevent obstruction to persons lawfully employed, he may order a person to take action with a wall in his possession in the sense of removing it.—Pitti Singh, 8 W. R., 37.

A Ghosain went forth to pay a visit accompanied by a body of retainers carrying horns which were blown for his glorification and to the annoyance of another person with whom he was not on good terms. The Magistrate, under S. 62, ordered that neither party should use any musical instruments in the neighbourhood of the house of the other. This order was pronounced by the Calcutta High Court to be open to objection, and was modified, the parties being forbidden to use horns or other musical instruments *for the purpose of mutual offence* in the neighbourhood of each other's house.—Ram Chunder Geer Ghosain, 6 W. R., 40.

CH. III.
S. 63.

A Magistrate is not competent to direct a person to abstain from holding a "hât" [market], on the representation of the holder of a rival "hât" that injury would be caused to his property. The loss which one man fears may be entailed upon him by the competition of another in the same line of business is not injury to property such as is contemplated by S. 62, Criminal Procedure.—Calcutta High Court, 653, 1863, In another case, the same Court ruled that the terms of the law do not authorise a Magistrate to interfere with the exercise of his ordinary rights by a landholder, merely because such exercise may require vigilance on the part of the Police, and may, in the absence of such vigilance, lead to an affray. Amongst the rights of landholders is that of establishing "hâts" in any portion of their estates, and this right is not only an ordinary incident to the right of property, but it is, in every instance, a most valuable right. It is consequently not one with which the Magistrate can interfere under the power given to him by S. 62. The Court therefore reversed the order of the Deputy Magistrate, and declared that it will remain with the petitioner to hold his "hât" on whatever day seems most convenient to him.—Seeb Chunder Bhuttacharjee, 4 W. R. 12. An order of a Magistrate under S. 62, does not bar or supersede the adjudication of the matter by a Civil Court or the execution of a decree. Held, that a person acting under a decree of a Civil Court but in disobedience of the order of a Magistrate under S. 62, in pursuance of a decree of the Civil Court, previously issued, is not liable to punishment under S. 188, Penal Code.—5 Agra, 108.

The non-compliance with an order issued under S. 62, is made punishable by S. 188, Penal Code, which declares that "whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience cause or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance or injury to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred Rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both."

"*Explanation.*—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knew of the order that he disobeys, and that his disobedience produces, or is likely to produce, harm."

Although an order passed by a Magistrate under S. 62 of this Code is not appealable, its legality can be tested by disobedience which will lead to a prosecution under S. 188, Penal Code, and bring that question to an issue.—Pitti Singh, 8 W. R., 37. The Madras High Court has also expressed a similar opinion.

There is also another remedy by Civil action which is more often resorted to.

The inhabitants of a certain village applied to a Magistrate and obtained from him an order to the Police to cut a certain bund which obstructed the drainage on their lands. The party affected sued the villagers for damages resulting therefrom. The Calcutta High Court held, that, as it was not shown that the parties who applied were acting otherwise than in good faith and believing that they had the right to make such application, they could not be liable for damages, because the Magistrate made an order which, it appeared afterwards, he ought not to have made.—Pryag Singh, 8 W. R., 112, *Civil Cases.*

S. 15.

Magistrate may prohibit the repetition or continuance of public nuisances.

63. Any Magistrate* may enjoin any person not to repeat or continue a public nuisance.†

† S. 268, I.P.C.

It the definition of "public nuisance" contained in S. 268, Penal Code, be applied, the term "person" would include "any company, or association, or body of persons, whether incorporated or not."—S. 11, Penal Code.

Orders passed under S. 63, are not appealable.—Madras High Court, 1863. Disobedience to an injunction against repeating or continuing a public nuisance is punishable, under S. 291, Penal Code, by simple imprisonment which may extend to six months, or fine, or both.

A Civil Court is not competent to try a suit brought to question an order of a Magistrate to discontinue a public nuisance, or to declare that the property affected was not obnoxious as a public nuisance. Bakas Ram Sahoo, 7 W. R., 11, *Civil Cases.* See also cases quoted in note to S. 308.

CHAPTER IV. Ss. 64—75.

Of the Summons.

Proceeding to compel appearance.

64. When an offence has been committed, or is supposed to have been committed, the proceeding, in order to compel the person known or suspected to have committed such offence to appear for the purpose of enquiry concerning the same, may be by summons or arrest.

When the attendance of an officer in permanent official employ, or of an individual of known respectability and prudent demeanour is required, it shall be competent to the Court to notify the same to him by written order or letter, and to take no other security than his returning the same, with an endorsement, signifying his acquiescence.—Reg. (Bombay) XIII. 1827, S. 34 cl. 3.

Complaint.

65. A summons or a warrant of arrest may be obtained on a complaint as hereinafter provided.

Examination of complainant.

66. When, in order to the issuing of a summons or a warrant against any person for any offence, a complaint is made before the Magistrate of the District,* or a Magistrate† who is authorized to receive such complaint without reference from the Magistrate of the District,* such Magistrate shall examine the complainant. The examination shall be reduced into writing, and shall be signed by the complainant, and also by the Magistrate.

* Ss. 14.18
† S. 15.

"Magistrate who is authorized to receive such complaint." The Governments of each of the Divisions of the Presidency of Bengal can, by Act X. of 1854, confer such a power on any Assistant or Deputy Magistrate. Unless such officers have been so empowered, they can only try charges within their competency which have been referred to them by the Magistrate of the District, or a Magistrate in charge of a Division of a District. Officers with the full powers of a Magistrate are competent to receive and try any charge which is within their competency.—Calcutta Sudder Court, 18, 1862: High Court, 25, 1866: also Agra Court, Cir. 4, 1862.

No time is prescribed by law within which a complaint or charge must be made: it depends upon the nature of the case. The delay must be explained, and should have due weight with the Magistrate. Jud. Com. Oude, 1863. A Magistrate is bound to receive all complaints, whether they be preferred orally or in writing, but after the examination of a complainant, he is not bound to record a written complaint.—Calcutta High Court, Cir. 6, 1864. The receipt of a written complaint does not dispense with the subsequent examination of a complainant, *Ibid.*—In all depositions there shall be entered the name of the deponent, the name of his or her father, and, if a married woman, the name of her husband, the religion, caste, profession, and age of the deponent, and the village and Pergunnah in which he or she resides.—Cir. 19, 1864.

The complainant shall be examined upon oath or solemn affirmation, or otherwise according to the provisions of the law for the time being in force in relation to the examination of witnesses.—S. 43 *ante*. See also note,

A complaint is not indispensable as will appear on a reference to S. 68 *post*.

Under Act XXVI of 1867, S. 6, Art. 10, any petition or other application, when presented to any Criminal Court, when the petition or application contains a complaint of the offence of wrongful confinement or wrongful restraint, or of any offence other than an offence for which Police officers may arrest without warrant, as specified in column 3 of the Schedule annexed to the Code of Criminal Procedure, if in writing should be written on a stamp paper of the value of Rupee 1.

Any complaint or application of such offence presented by any Government Officer in his public capacity is exempt.—*Gazette of India* of 1868, p. 328.

There are also the following exemptions from this rule:—Petition, application, charge, or information respecting any offence, when presented, made, or laid before an Officer of Police, or before the heads of villages in the Presidency of Fort St. George, or before any village Police Officers in the Presidency of Bombay.

Any such petition, application, charge or information presented, made, or laid before a Criminal Court, when such Court shall think that it ought to be exempted from stamp duty.

Petition from any prisoner, convict, or other person in duress, or under restraint of any Court, or its officers.

S. 7 provides for oral complaints when a stamp is required by enacting that when the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which Police Officers may arrest without a warrant, as specified in the third column of the Schedule annexed to the Code of Criminal Procedure, and who has not already presented a petition stamped as required by Art. 10 of S. 6 of this Act, shall be reduced to writing under the provisions of the Code of Criminal Procedure, such examination shall be written upon stamp-paper of the value of one rupee to be supplied by the complainant, unless the Court shall think fit to write such examination upon plain paper.

Magistrate how to proceed on complaint.

67. The Magistrate before whom such complaint is duly made shall, if it appear to him that there is sufficient ground for proceeding, issue his summons, or, in cases in which a warrant may issue, his warrant for causing the person accused to appear before himself or some other Magistrate having jurisdiction. If, in the judgment of such Magistrate, there be no sufficient ground for proceeding, he shall dismiss the complaint.

On receiving a complaint, the Magistrate of the District, or Magistrate who is authorised to receive such complaint, without reference from the

Magistrate of the District, may either examine the complainant in the manner prescribed by S. 66, and proved under S. 67, to issue a summons or warrant, or, if there be no sufficient ground for proceeding, at once dismiss the complaint, or he may at once make over the complaint to be enquired into, or tried by, any Magistrate subordinate to him.

The officer who examines the complainant should, in all cases, decide whether a summons or warrant should issue.—Calcutta High Court Cir. 6, 1864.

The distinction between offences in the enquiry into or determination of which a summons or warrant may be issued, is set forth in Col. 4 of the Schedule annexed to this Act, but Ss. 179, 248, 257, leave this to the discretion of the Magistrate.

There is no appeal against an order under S. 67 dismissing a complaint, but if the order be contrary to law, it can be referred to the High Court under S. 434. It is against the law to dismiss a complaint without first examining the complainant, although, after the complainant has been examined, it is quite competent to the Magistrate, if he sees no ground for proceeding, to dismiss the complaint.—Hurreck Chand Nowlaka, 8 W. R., 12.

If there is *primâ facie* a criminal offence made out, a Magistrate is bound to issue a summous or warrant, as the case may require. He cannot refuse to take cognizance of the offence, because he considers that a Civil suit would afford the more convenient or appropriate remedy.—Nubbas Mahato, 8 W. R., 65.

A Sessions Judge is not competent to order a Magistrate to proceed by issuing a summons or warrant, or to hold further enquiry in a case dismissed by him under S. 67, Criminal Procedure, before the issue of a summons. If such a case exhibits negligence or ignorance on the part of a Magistrate, the Sessions Judge should report it to the High Court.—*Id.* 432, 1863; also 3 Agra, 38.

Magistrate may take cognizance of offences without complaint made.

68. Except as is otherwise provided in Chapter XI of this Act, the Magistrate* of the District, or a Magistrate† in charge of a division‡ of a District, may, without any complaint, take cognizance of any offence which may come to his knowledge, and may issue a summons, or, in cases where a warrant may issue, a warrant of arrest against the person known or suspected to have committed such offence, in the same manner as if a complaint had been made against such person. The provisions of this Section shall not apply to the offences described in Chapters XIX, XX, and XXI of the Indian Penal Code.

* Ss. 14. 18.
† S. 15.
‡ S. 18.

Proviso.

Chapter XI., Criminal Procedure, (Ss. 166—178) relates to prosecutions in certain cases regarding offences which require special sanction for their trial. Chapters XIX., XX., and XXI. of the Indian Penal Code refer, respectively, to criminal breaches of contracts of service, to offences relating to marriage, and to defamation. The affinity that such offences have to Civil actions, was, most probably, the reason why the Legislature required the prosecution of the party injured without the interference of the Magistrate.

The provisions of S. 68 enable a Magistrate to issue a summons or warrant on a charge of theft on the information of the servant of the party injured, and to proceed with the trial, (Madras High Court, 1864); but the Magistrate should be satisfied that there is reasonable excuse for the absence of the principal.—Calcutta High Court, 264, 1864. See also Ramrottun Mogee, 6 W. R., 3.

The Calcutta High Court [965, 1865] has ruled that cases instituted under S. 68 cannot be referred for decision to any Subordinate Magistrate,

but must be heard and decided by the Magistrate of the District, or Magistrate in charge of a division of a District, who took cognizance of the offence, since neither S. 273, nor any other law, permits any such case to be referred to a Subordinate Magistrate for enquiry or trial.

* S. 15.

Summons, what it is to contain, and how to be directed.

69. Every summons issued by a Magistrate* to an accused person shall be in writing, and shall be signed and sealed by such Magistrate, and shall be in the form (A) given in the Appendix, or to the like effect.

Summons by whom to be served.

70. A summons shall ordinarily be issued through a Police Officer; but the Magistrate issuing the summons may, if immediate service be necessary, and no Police Officer be immediately available, direct the summons to be served by any other person.

A similar provision is made for the issue of a warrant of arrest [S. 77], or of a search warrant [S. 115.]

Where the agency of the Police cannot be obtained, the expense of serving a summons must be defrayed by Goverment.—Calcutta High Court Cir., 1st February 1864.

Summons how to be served.

71. The summons shall be served on the accused personally, or, in case the accused person shall not be found, it may be left for him with some adult male member of his family residing with him.

A majority of the Judges of the late Sudder Court, Calcutta, [282, 1862] ruled that the power of serving a summons on an accused person is not limited in any way, and that, following the procedure prescribed [S. 84] regarding warrants, a summons may be served on a party named in it, residing in the jurisdiction of any Magistrate without any application in the first instance to the authority of that particular District or division of a District.

Summons should be served on Railway officials and employees through their superior Officers, (Government of Bengal, Cir. 199, Jan. 10th, 1865), and on Police Officers, through the Superintendent of the District, or the Assistant in charge of the Sub-division to which they may belong, (Cal. High Court Cir. 14, 1866), and on Sub-Assistant Surgeons or Native Doctors at outstations, through the Magistrate of the District, or other Executive Head of the District, to enable him, in communication with the Civil Surgeon, to make arrangements for the conduct of their medical duties during the absence of such Officers (*Id.* Cir. 1, dated 10th Jan. 1868).

Mode of service if accused cannot be found, &c.

72. When the accused person cannot be found, and there is no adult male member of his family on whom the service can be made, the serving Officer shall fix a copy of the summons on some conspicuous part of the house in which the accused person ordinarily resides.

Service of summons on a *witness* cannot be effected by fixing a copy on some conspicuous part of the house in which he ordinarily resides. The law lays down a different procedure.—See Ss. 187, 224, 264, 275.

Notwithstanding summons, warrant may issue in certain cases.

73. A Magistrate may (notwithstanding such summons), either before the appearance of the accused person, as required by such summons, or after default made by him so to appear, issue a warrant of arrest against such person.

Summons or warrant when grantable for an offence committed beyond local jurisdiction.

74. The Magistrate* of the District, or a Magistrate in charge of a division† of a District, may issue a summons or warrant for the apprehension of any person within such District† or division of a District† in respect of any offence known or suspected to have been committed by such person in a different District or division of a District, or on the high seas, or in a foreign country, and for which, if committed within the jurisdiction of such Magistrate, he might issue a summons or warrant.

* Ss. 14, 18.

† S. 18.

Unless the Magistrate, issuing the warrant in such a case, is authorised to complete the enquiry himself, he should send the person arrested to the Magistrate within the limits of whose jurisdiction the offence is known or suspected to have been committed, or take bail for his appearance before such Magistrate, if the offence of which such person is suspected is bailable. When the Magistrate who issued the warrant, cannot satisfy himself as to the Magistrate to whom the person arrested should be sent, the case should be reported for the orders of the Sudder Court. S. 88 *post.*

* See Act I. 1849, and Act VI. of 1854 [Appendix C] for the law regarding offences committed in foreign territories, and extradition.

Provisions in this Chapter relating to a summons and its issue applicable to all summonses.

75. The provisions relating to a summons and its issue, contained in this Chapter, shall be applicable to every summons issued under this Act.

The terms of this Section do not refer to the *service* of a summons. It will be found on reference to Ss. 187—190, that a different procedure is provided in cases of summons on *witnesses.*—4 W. R. 7 C. L.

CHAPTER V. Ss. 76—99.

Of the Warrant and its Execution.

Form of warrant.

76. Every warrant issued by a Magistrate‡ shall be in writing,§ and shall be signed and sealed by such Magistrate, and shall be in the form (B) given in the Appendix, or to the like effect.

‡ S. 15.

§ S. 10.

Warrants to whom to be directed.

77. A warrant shall ordinarily be directed to a Police Officer, but the Magistrate issuing a warrant may, if imme-

diate service be necessary, and no Police Officer be immediately available, direct the warrant to any other person.

A provision similar to that in S. 71, enacted for the service of a summons, and in S. 115 for the issue of a search warrant.

When directed to any person other than a Police Officer.

78. When a warrant is directed to a person other than a Police Officer, any other person may aid in executing such warrant, if the person to whom the warrant is directed be near at hand, and acting in the execution of the warrant.

It will be observed that persons are *not bound* to give their aid, when a warrant is not directed to a Police Officer. By S. 82, however "every person is bound to assist a Magistrate or Police Officer demanding his aid in the taking of any other person whom such Magistrate or Police Officer is bound to arrest."

To several persons jointly.

79. A warrant may be directed to several persons, and when so directed, may be executed by all, or by any one or more of such persons.

Police Officer may endorse warrant to another Officer.

80. A warrant directed to a Police Officer may also be executed by any other Police Officer whose name shall be endorsed upon the warrant by the Officer to whom the warrant is directed.

Magistrate issuing a warrant may personally superintend its execution.

81. The Magistrate,* by whom a warrant of arrest is issued, may attend personally, for the purpose of seeing that the warrant is duly executed. The Magistrate* may also at any time direct the arrest in his presence of any person for whose arrest he is competent to issuse a warrant.

* S. 15.

By S. 110, a Magistrate may order the arrest of any person committing an offence in his presence.

All persons bound to assist in certain cases.

82. Every person is bound to assist a Magistrate† or Police Officer demanding his aid in the prevention of a breach of the peace, or in the suppression of a riot‡ or an affray,§ or in the taking of any other person whom such Magistrate or Police Officer is authorized to arrest.

† S. 15.

‡ S. 146 Penal Code.

§ S. 159 Penal Code.

Intentional omission to give such assistance is punishable under S. 187, Penal Code, with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred Rupees, or with both.

Persons acting on such demand made by a Magistrate or Police Officer should be careful to protect themselves by stating the authority under which they act, or, if they have authority in writing, by producing such authority if demanded (S. 99, Penal Code, Explanation 2), as otherwise the persons against

whom they may act might offer resistance under the plea of the exercise of the right of private defence.

S. 151, Penal Code, declares that "whoever knowingly joins or continues in any assembly of five or more persons, likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both. *Explanation.*—If the assembly is an unlawful assembly, within the meaning of S. 141, the offender will be punished under S. 145," that is, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ss. 154, 155, 156, Penal Code, impose certain obligations on owners or occupiers of land, on which unlawful assemblies are held or riots committed, as well as on their agents or managers.

Where a warrant of a Magistrate must be executed.

83. A warrant issued by a Magistrate* shall ordinarily be executed (unless, it be specially otherwise provided) within the jurisdiction of the Magistrate† of the District in which it was issued.

* S. 15.

† Ss. 14, 18.

Warrant executed in another jurisdiction.

84. When any person against whom a warrant is issued by a Magistrate‡ shall escape, go into, or be, in any place out of the jurisdiction of the Magistrate issuing such warrant, the warrant may be executed in such place; and if the person against whom the warrant is issued is arrested in such place, the Police Officer, or other person executing the warrant, shall§ carry him before the Magistrate‖ of the District, or some other Magistrate within whose jurisdiction the arrest was made. If the offence with which the person arrested is charged be bailable, and such person shall be willing and ready to give bail for his appearance before the Magistrate by whom the warrant was issued, the Magistrate before whom such person is brought, shall take bail of such person for his appearance accordingly, and shall release him from custody, and forward the recognizance or other bail-bond to the Magistrate by whom the warrant was issued. If the offence be not bailable, or if the person arrested be unable to find bail, he shall be forwarded to the Magistrate by whom the warrant was issued. If the arrest be made within the local limits of the jurisdiction of a Supreme Court of Judicature,¶ the person accused, when arrested, shall be taken before the Chief Commissioner of Police, or a Police Magistrate. Such Chief Commissioner or Police Magistrate shall forward the person arrested to the Magistrate by whom the warrant was issued, or, if the offence with which the person

‡ S. 15.

§ Not *always* necessary, see S. 85.

‖ Ss. 14, 18.

If arrest be made within jurisdiction of a Supreme Court.

¶ In a Presidency Town.

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arrested is charged be bailable, shall admit him to bail, and shall forward the recognizance or other bail-bond to such Magistrate.

"The Police Officer, or other person executing the warrant, shall carry him before the Magistrate of the District, or some other Magistrate within whose jurisdiction the arrest was made." Thus, in the Lower Provinces of Bengal where districts are generally split up into sub-divisions or divisions (S. 18), the person arrested may be brought before the Sub-divisional Magistrate.

Offences under the Penal Code are bailable, or non-bailable, as set forth in the Schedule hereto annexed.

If arrest be made within 20 miles, person arrested may be carried before the Magistrate who issued the warrant.

85. If the place of arrest, under the last preceding Section, be within twenty miles from the place at which the warrant was issued, the person arrested may be carried, in the first instance, before the Magistrate who issued the warrant.

Warrant to be endorsed may be sent by post.

86. It shall be competent to a Magistrate* issuing a warrant for the arrest of a person out of his jurisdiction, to direct the warrant to the Magistrate† of the District in which such person is, or is supposed to be, and to transmit the same by post. On receipt of the warrant by the Magistrate* to whom it is directed, he shall endorse his name on such warrant, and enforce its execution in the same manner as if the warrant had been originally issued by himself. If the person named in the warrant be apprehended, he shall be carried before the Magistrate who endorsed the warrant, and shall be dealt with by such Magistrate as provided in Section 84 of this Act.

* S. 15.

† Ss. 14, 18.

Warrants for execution within limits of Supreme Court to be addressed to Chief Commissioner or Magistrate of Police.

87. A warrant issued under the last preceding Section for execution within the local limits of a Supreme Court of Judicature,‡ shall be directed to the Chief Commissioner of Police, or to a Police Magistrate, who shall proceed in the manner provided in Section 84 of this Act.

‡ In a Presidency Town.

Magistrate how to proceed on arrest under his own warrant for an offence committed out of his jurisdiction.

88. On the arrest of a person for whose apprehension a warrant has been issued under the provisions of Section 74 of this Act, in respect of an offence known or suspected to have been committed in another District§ or division§ of a District, the Magistrate who issued the warrant shall, unless he is authorized to

§ S. 18.

complete the enquiry himself, send the person arrested to the Magistrate within the limits of whose jurisdiction the offence is known or suspected to have been committed, or take bail for his appearance before such Magistrate, if the offence of which such person is suspected is bailable. When the Magistrate who issued the warrant cannot satisfy himself as to the Magistrate to whom the person arrested should be sent, the case shall be reported for the orders of the Sudder Court.* * S. 19.

A warrant under S. 74 can be issued only by the Magistrate of the District, or a Magistrate in charge of a division of a District.

"Unless he is authorised to complete the enquiry himself." The words evidently refer to the Special Jurisdiction created by Ss. 31, 32, 33, for certain offences.

A Magistrate may, however, detain a person so arrested, and apply to the Sudder Court for permission [S. 35] to enquire into or determine the case, whenever he may consider that such will promote the ends of justice, or tend to the general convenience of the parties or witnesses.

Subordinate Magistrate how to proceed in such cases.

89. If the arrest was made under a warrant issued under Section 74 of this Act by a Magistrate subordinate to the Magistrate of the District, such Magistrate shall send the person arrested to the Magistrate of the District, unless the Magistrate in whose jurisdiction the offence is suspected to have been committed, shall issue his warrant for the arrest of such person, in which case the person arrested shall be delivered to the Police Officer or other person executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued. If the offence of which the person arrested is suspected, shall have been committed in the jurisdiction of another Subordinate Court of the same District, the Magistrate who issued the warrant under Section 74 of this Act, shall send the person arrested to the Magistrate in charge of the division in which the offence was committed.

As a warrant under S. 74 can be issued only by the Magistrate of the District, or a Magistrate in charge of a division of a District, the Magistrate subordinate to the Magistrate of the District would be a Divisional Magistrate. The term clearly is not used necessarily in the sense it is mentioned in S. 22, as a Divisional Magistrate may, and very often is, an officer exercising the full powers of a Magistrate.

The latter part of the Section follows out the principle laid down in S. 26, that ordinarily "every offence shall be enquired into, and determined in, the District or division of a District in which the offence was committed."

Notification of substance of warrant.

90. A Police Officer or other† person executing a warrant of arrest, shall notify the substance of the warrant to the † Ss. 77, 79.

person to be arrested, and, if required to do so, shall show the warrant to such person.

This would deprive the person to be arrested of any plea that, in resisting the execution of the warrant, he was acting in the exercise of the right of private defence.—See S. 99, Penal Code.

Warrant how to be executed.

91. In making an arrest, the Police Officer or other person* executing the warrant, shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

* Ss. 77, 79.

Resisting an endeavour to arrest.

92. If a person against whom a warrant of arrest is issued, shall forcibly resist the endeavour to arrest him, it shall be lawful for the Police Officer or other person† executing the warrant, to use all such means as may be necessary to effect the arrest.

† Ss. 77, 79.

In connection with this Section, the terms of S. 99, Penal Code, particularly those of the Explanation, should be borne in mind; and it is, therefore, of the greatest importance that, in making an arrest, every possible information and publicity should be given to the person to be arrested, so as to deprive him of the shadow of an excuse for assuming the exercise of a right of private defence.

S. 224, Penal Code, declares that "whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence (*i. e.* offence punishable under that Code, S. 40) with which he is charged, or of which he has to be convicted, shall be punished with imprisonment of either description, for a term which may extend to two years, or with fine, or with both." Voluntarily obstructing any public servant, *i. e.* Police Officer, in the discharge of his public functions, is made punishable by S. 186, Penal Code. A threat of injury to a public servant (Police Officer), for the purpose of inducing him to forbear or delay to do any act connected with the exercise of his public functions, is punishable under S. 189, Penal Code. Acts against the person of a Police Officer, acting in discharge of his duty, are provided for in Ss. 332, 333, 353, Penal Code.

S. 78 declares that, "when a warrant is directed to a person other than a Police Officer, any other person may aid in executing such warrant, if the person to whom the warrant is directed be near at hand and acting in execution of the warrant;" and by S. 82 "every person is bound to assist a Magistrate or Police Officer demanding his aid in the taking of any other person whom such Magistrate of Police Officer is bound to arrest." The intentional omission to give such assistance is punishable under S. 187 Penal Code.

Search of house entered into by person against whom warrant has been issued.

93. If there is reason to believe‡ that any person, against whom a warrant has been issued, has entered into, or is within any house or place, it shall be the duty of any person residing in or in charge of such house or place, on demand of the Police Officer or other person executing the warrant,§ to allow such Police Officer or other person free ingress thereto, and to afford all reasonable facilities for a search therein.

‡ S. 26, Penal Code.

§ Ss. 77, 79.

Voluntarily obstructing a Police Officer in the discharge of his public functions, is an offence punishable under S. 186, Penal Code; the intentional omission to render assistance, under S. 187; the harbouring of an offender, under Ss. 212, 216; and the intentional resistance or illegal obstruction to the lawful apprehension of any other person for an offence [under Penal Code, see S. 40], under S. 225.

Breaking of outer or inner door or window.

94. The Police Officer or other person* authorized by warrant to arrest a person, may break open any outer or inner door or window of any house or place, whether that of the person accused, or of any other person, in order to execute such warrant, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

* Ss. 77, 79.

Breaking open a zenana or female apartment.

95. If information be received that a person accused of any offence, for which a warrant may† issue, is concealed in a zenana or apartment in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the Police Officer or other person‡ employed to execute the warrant, shall take such precautions as may be necessary to prevent the escape of the accused person; and if the accused person shall not deliver himself up, the Police Officer or other person authorized to execute the warrant may, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance, break open such zenana or apartment, and execute the process entrusted to him; first giving notice to any woman as aforesaid in such zenana or apartment, not being a person against whom a warrant has been issued, that she is at liberty to withdraw, and affording her every reasonable facility for withdrawing.

† Schedule, Col. 4

‡ Ss. 77, 79.

No unnecessary restraint.

96. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

Party arrested to be brought immediately before the Magistrate.

97. The Officer or other§ person executing the warrant shall, without unnecessary delay, bring the person arrested before the Magistrate before whom he is required by this Act to produce him.

§ Ss. 77, 79.

No threat, promise, or caution, as to disclosure by party arrested.

98. No Police Officer or other person shall offer to the person arrested any inducement, by threat or promise or otherwise, to make any disclosure. But no Police Officer or

other person shall prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

Obtaining such a disclosure by hurt or grievous hurt, is an offence punishable under Ss. 330, 331, Penal Code.

99. The provisions relating to a warrant and its issue, contained in this Chapter, shall be applicable to every warrant issued under this Act.

Provisions in this Chapter relating to a warrant and its issue applicable to all warrants.

CHAPTER VI.—Ss. 100—111.

Of Arrest without Warrant.

100. A Police Officer in the cases hereinafter mentioned may, without orders from a Magistrate and without a warrant, arrest—

Police Officer may arrest without warrant in certain cases.

First.—Any person who in the sight of such Police Officer shall commit an offence specified in Column 3 of the Schedule annexed to this Act, as an offence for which Police Officers may arrest without a warrant.

Secondly.—Any person against whom a reasonable complaint has been made or a reasonable suspicion exists of his having been concerned in any such offence.

Thirdly.—Any person against whom a hue and cry has been raised of his having been concerned in any such offence.

Fourthly.—Any person who is a proclaimed offender.

Fifthly.—Any person who is found with stolen property* in his possession.

*S. 410, Indian Penal Code.

Sixthly.—Any person who shall obstruct a Police Officer while in the execution of his duty.

Police Officers can also arrest without warrant and without the orders of a Magistrate, in the cases provided for in S. 104.

With the 2nd cl., the provisions of S. 141 should be borne in mind: "It shall be lawful for a Police Officer to pursue, with the view to arrest, any person accused of any of the offences specified in Column 3 of the Schedule annexed to this Act, as offences for which Police Officers may arrest without a warrant, into the limits of another Police Officer, whether subordinate to the same Magistrate as himself or to the Magistrate of any other District, and whether such place be under the same Local Government or not.

In a case in which it was held that the Police abused their power of arrest, the Calcutta High Court made the following remarks on the terms of cl. 2:—

"What is a reasonable complaint or suspicion must depend on the circumstances of each particular case, but it must be at least founded on some definite fact tending to throw suspicion on the person arrested, and not on mere vague surmise or information. Still less have the Police power to arrest persons, as they appear sometimes to do, merely on the chance of something being proved hereafter against them. Any wilful excess by a Police Officer of his legal powers of arrest is, by S. 220 of the Penal Code, an offence punishable by imprisonment for seven years.—Behari Singh and others, 7 W. R., 3."

As to cl. 4 regarding the arrest of proclaimed offenders, &c., see Ss. 183 *et seq.*, which arm the Magistrates with stringent powers in the attachment and sale of property belonging to such persons.

The following remarks of the Calcutta High Court in the case of Behari Singh (7 W. R., 3) already cited, are deserving of attention in this place:—

"If, as is frequently the case, a Police Officer, without arresting a person himself, directs some of the neighbours to take charge of him, the Police Officer is responsible in the same way as if he had himself made the arrest, the person arrested by his order being in law in his custody.

Even if a person be rightly arrested, it does not rest with the discretion of the Police Officer to keep the prisoner in custody where, and as long as, he pleases. Under no circumstances can he be detained without the special order of a Magistrate more than twenty-four hours; at the expiration of twenty-four hours, unless the special order has been obtained, the prisoner *must* either be discharged or sent in to the Magistrate, and any longer detention is absolutely unlawful, and though the Code is not so express upon the place as the time of confinement, still we think it is perfectly clear that it was intended that where a Police Officer arrested any person, the prisoner should not be kept in confinement in any place which the subordinate officer might select, but that he should, if possible, be sent immediately to the Police Station, and there kept in the custody of the Officer in charge of the Station, who is the person entrusted by the Act with the conduct of the enquiry.

The following provisions of Act V. of 1861, S. 34, deserve attention in this place:—

"Any persons who, on any road or in any street or thoroughfare within the limits of any town *to which this Section shall be specially extended by the Local Government*, commit any of the following offences, to the obstruction, inconvenience, annoyance, riot, danger or damage of the residents and passengers, shall, on conviction before a Magistrate, be liable to fine not exceeding fifty Rupees, or to imprisonment not exceeding eight days; and it shall be lawful for any Police Officer to take into custody, without a warrant, any person who, within his view, commits any of such offences, namely:—

"*First.*—Any person who slaughters any cattle, or cleans any carcase; any person who rides or drives any cattle recklessly or furiously, or trains or breaks any horse or other cattle.

"*Second.*—Any person who wantonly or cruelly beats, abuses, or tortures any animal.

"*Third.*—Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading, or for taking up or setting down passengers, or who leaves any conveyance in such manner as to cause inconvenience or danger to the public.

"*Fourth.*—Any person who exposes any goods for sale.

"*Fifth.*—Any person who throws or lays down any dirt, filth, rubbish, or any stones, or building materials; or who constructs any cowshed, stable, or the like; or who causes any offensive matter to run from any house, factory, dung-heap, or the like.

"*Sixth.*—Any person who is found drunk or riotous, or who is incapable of taking care of himself.

"*Seventh.*—Any person who wilfully and indecently exposes his person, or any offensive deformity or disease, or commits nuisance by easing himself, or

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by bathing or washing in any tank or reservoir not being a place set apart for that purpose.

"*Eighth.*—Any person who neglects to fence in, or duly to protect any well, tank, or other dangerous place or structure."

The powers of a local Government under this law have been conferred by the Governor-General in Council on the Chief Commissioners of Oude, the Central Provinces and British Burmah, and on the Commissioners of Mysore and Coorg.—*Gazette of India*, 1867, p. 1409.

Vagabonds.

101. An Officer in charge of a Police Station may, without orders from a Magistrate and without a warrant, arrest or cause to be arrested any person found lurking within the limits of such Station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself, or any person who is a reputed robber, house-breaker, thief, receiver of stolen property knowing it to be stolen, or who is of notoriously bad livelihood.

In the instances given in S. 100, the arrest can be made spontaneously by *any* Police Officer: in the cases now specified, discretion to arrest is reposed only in a Superior Officer, *i. e.* one who is in charge of a Police Station. If the Officer in charge of a Police Station requires an officer subordinate to him to make such an arrest, he is required by S. 140 to deliver to such officer an order in writing, specifying the person to be arrested, and the offence for which the arrest is to be made. The Magistrate before whom a person arrested under S. 101 is brought, should proceed as directed in Chapter XIX, Ss. 295—307.

In Bengal village watchmen are required, by Regulation XX. 1867 S. 21, cl. 5, to convey to the Thanna (Police Station), immediate intelligence of any vagrants or other persons who may be lurking about the country without any ostensible means of subsistence, and who cannot give a satisfactory account of themselves. Regulation (Bengal) VI. 1810, S. 2, holds landholders of every description (specifying them) especially accountable for the early and punctual communication to the Magistrates and Police Darogahs, either publicly or secretly, as the informants may judge proper, of all intelligence which they may obtain respecting the resort to any place within the limits of any estate or farm held or managed by them of any person or persons of the different classes of people ordinarily known by the appellation of dacoits, cozauks, thugs, or budducks, or of any other description of robbers. Similar obligations are imposed by Regulation (Bengal) I. 1814, S. 10, as to the giving of information regarding the residence of any notorious receivers or vendors of stolen property.

Police may interfere to prevent offences.

102. It shall be the duty of every Police Officer to prevent, and he may interpose for the purpose of preventing, the commission of any offence specified in Column 3 of the Schedule annexed to this Act, as an offence for which Police Officers may arrest without a warrant.

Information to be communicated.

103. It shall be the duty of a Police Officer, who shall receive information of a design to commit any such offence,* to communicate such information to the Police Officer

* S 102.

to whom he is subordinate, and to any other Officer whom it may concern to prevent or take cognizance of the commission of any such offence.

The simple omission to give such information would be punishable under S. 176, Penal Code, but if there be any intention to defeat justice, the offence is provided for by S. 119.

May arrest to prevent offences.

104. A Police Officer, knowing of a design to commit any such offence* as aforesaid, may arrest, without orders from a Magistrate, and without a warrant, the person so designing, if the commission of the offence cannot be otherwise prevented.

* S. 102.

Injury to public property.

105. A Police Officer may, of his own authority, interpose for the prevention of any injury attempted to be committed in his view to any public buildings, work of art, road, bridge, tank, well, or water-channel, or to prevent the removal or injury of any public land-mark or buoy, or other mark used for navigation.

The acts, the commission of which a Police Officer is hereby authorised to prevent, are punishable under Ss. 430—434, Penal Code.

Person in charge of house entered into by another of whom Police Officer is in search, to allow ingress, &c.

106. If there is reason to believe† that any person liable to arrest under this Chapter without a warrant, of whom a Police Officer is in search, has entered into, or is within, any house or place, it shall be the duty of the person residing in or in charge of such house or place, on the demand of such Police Officer, to allow ingress thereto, and all reasonable facilities for a search therein.

† S. 26, Penal Code.

See Notes to Ss. 92, 93.

Procedure if ingress be not obtained.

107. If ingress to such house or place cannot be obtained under the last preceding Section, the Police Officer authorized to make the arrest shall take such precautions as may be necessary to prevent the escape of the person to be arrested, and send immediate information to a Magistrate.‡ If no warrant can be obtained without affording such person an opportunity of escape, and there is no person authorized to enter without a warrant on the spot, the Police Officer may make an entry into such house or place and search therein.

‡ S. 15.

A Police Officer, it will be observed, is not authorised to break into a house for the purpose of arresting a person without a warrant, unless he has

good reason for supposing that, by the delay in getting a warrant, the person to be arrested will have an opportunity of escaping. The persons who, by closing a house, prevent the action of the Police, render themselves liable to punishment under the Indian Penal Code.—See Notes to S. 92, 93.

108. Any person who is known or suspected to have committed an offence for which a Police Officer is not authorized to arrest without a warrant, and who shall refuse, on demand of a Police Officer, to give his name and residence, or shall give a name or residence which there is reason to believe to be false, may be detained by such Police Officer for the purpose of ascertaining the name or residence of such person, and with a view to future proceedings.

Person charged with an offence refusing to give his name and residence.

Thus a Police Officer should interfere to suppress an affray, that is, a disturbance of the public peace by two or more persons fighting in a public place [S. 159, Penal Code]; and on his demanding aid, every person is bound to assist him in suppressing that affray [S. 82, Criminal Procedure]: but as he cannot arrest without a warrant, persons committing an affray [see Schedule], he should act in the manner laid down in this Section.

109. A Police Officer having made an arrest under this Chapter, shall take or send the person arrested without unnecessary delay before the Magistrate who has jurisdiction in the case, or before the Officer in charge of a Police Station.

Party arrested to be taken immediately before the proper authority.

S. 152 further declares that no Police Officer shall, without the special order of a Magistrate, detain an accused person for a longer period than under all the circumstances of the case is reasonable: such period in no case to exceed twenty-four hours.

110. When any offence is committed in the presence of a Magistrate, such Magistrate may order any person to arrest the offender, and may thereupon commit him to custody, or, if the offence is bailable, may admit him to bail.

Arrest for an offence committed in the presence of a Magistrate.

111. A Magistrate or Officer in charge of a Police Station may command an unlawful* assembly to disperse, and it shall thereupon be the duty of the members† of such unlawful assembly to disperse accordingly.

Unlawful assembly to disperse on the order of a Magistrate, &c.

* 141, Penal Code.

† 142, Penal Code.

Non-compliance with such a command is made an offence by S. 145, Penal Code, and renders the offenders liable to arrest without a warrant, and, on conviction, to be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CHAPTER VII.—Ss. 112 & 113.

OF ESCAPE AND RE-TAKING.

Person arresting may re-take on escape and deal with the party arrested as on original taking.

112. If a person lawfully arrested under the provisions of this Act shall escape, or be rescued, it shall be lawful for the Police Officer or other person from whose custody the person so arrested shall have escaped, or have been rescued, to make fresh pursuit, and re-take him in any place, either within or without the jurisdiction where he was so in custody, and to deal with such person as such Police Officer or other person might have done on an original taking.

The procedure laid down in S. 84 should apparently be followed in such cases.

"Escaping," "rescuing" and "attempts to escape or to rescue," are punishable under Ss. 224, 225, Penal Code. Act IV. of 1867 has extended the application of this law to the cases of persons under custody or in confinement under charge or conviction of any offence under any special or local law, and S. 4 of that Act makes a punishable offence an escape from custody under which a person is lawfully detained for failing to furnish security for good behaviour under Chapter XIX. of this Code.

S. 33 of this Code determines by what Courts such offenses should be tried.

May adopt the same measures as on original taking.

113. In order to re-take any person, as provided in the last preceding Section, the Police Officer or other person making such fresh persuit may adopt the same measures as he might have adopted on the original taking.

These measures are described in the last preceding Chapter.

CHAPTER VIII.—Ss. 114—132.

OF SEARCH WARRANT.

When grantable by a Magistrate.

114. When a Magistrate* shall consider that the production of any thing is essential to the conduct of an enquiry into an offence known or suspected to have been committed, he may grant his warrant to search for such thing; and it shall be lawful for the Officer charged with the execution of such warrant to search for such thing in any house or place within the jurisdiction of such Magistrate. In such case the Magistrate may specify in his warrant the house or place, or part thereof, to which only the search shall extend.

* S. 15.

The law contemplates the production of some specific or distinct thing or object which may be deemed essential to the conduct of an enquiry, and to the conviction of the accused party, such, for instance, as a bloody knife, a vessel containing poison, a forged document, a piece of stolen property, and so on; but it does not empower Police Officers or other underlings to make harassing domiciliary visits, to enquire minutely into the private concerns of individuals, and to seize any part of their papers, under the bare chance that something might be found tending to the conviction of any accused parties. It is essential to the legality of a search warrant, *first*, that the production of a particular thing is essential; *second*, that the Magistrate, and he alone, shall determine that such production is essential; and, *third*, that a specified house or place is that to which only the search shall extend; and it is not lawful for the searching Officer to conduct the search in the absence of these essentials to it.

But here the warrant was not for the production of any particular thing, but generally for the production of anything that might by any possibility be considered to bear upon the charge against Doorga Churn; and the person to whom the warrant was directed was instructed in it to search, not only the house of Hossan Ali, but that house and also another, and anybody else's house that he thought fit, to find whatever he thought essential to the conduct of the enquiry into the offence charged on Doorga Churn.

So the warrant was not for a particular thing. The Magistrate was not the person to determine the essentiality of any particular thing, and the house or place to be searched was not a specified house or place and such only, and it was not lawful, therefore, to the searching Officer to conduct the search.

How to be directed.

115. A search warrant shall ordinarily be directed to a Police Officer, but the Magistrate issuing the search warrant may, if immediate search is necessary, and no Police Officer be immediately available, direct the warrant to any other person.

A provision similar to that prescribed for the service of a summons [S. 70], and the issue of a warrant of arrest [S. 77].

A warrant to a Police Officer may be executed by another.

116. A search warrant directed to an Officer in charge of a Police Station may, if such Officer is not able to proceed in person, be executed by any Officer subordinate to such Officer. In such case the name of such subordinate Officer shall be endorsed upon the warrant by the Officer to whom the warrant is directed.

S. 80 contains a similar provision for the execution of warrant of arrest.

How to be executed out of jurisdiction of the Magistrate.

117. When it shall be necessary for a search warrant to be executed out of the jurisdiction of the Magistrate issuing the warrant, the Magistrate within whose jurisdiction the warrant is to be executed shall endorse his name on the warrant, which shall be sufficient authority for the Police Officer charged with the execution of such warrant to execute the same within the same jurisdiction; or the search warrant may be directed to the Magistrate within whose jurisdiction the search is to be made, and such Magistrate shall thereupon endorse

his name on such warrant and enforce its execution in the same manner as if the warrant had been issued by himself.

Search warrant may in cases of emergency be executed without endorsement.

118. In any case in which there is reason to believe* that the delay occasioned by obtaining the endorsement of the Magistrate in whose District the warrant is to be executed, will prevent the discovery of the thing for which search is to be made, the Police Officer charged with the execution of the search warrant may execute the same in any place beyond the jurisdiction of the Magistrate by whom it was issued, without the endorsement of the Magistrate in whose jurisdiction that place is situate. If the thing for which search is made is found in such place, it shall be immediately taken before the Magistrate in whose jurisdiction it is found, and who, unless there be good cause to the contrary, shall make an order authorizing it to be taken to the Magistrate who issued the warrant.

* S. 26., P. C.

Thing found to be taken immediately to the Magistrate within whose jurisdiction it is found.

This is one of those cases in which the Police Officer has discretion to act. A similar discretion is allowed by S. 107. The principle applied to each case is the same, that justice should not be defeated by the delay which would be necessary to comply with legal form. A Police Officer acting in good faith would be protected by Ss. 76, 79, Penal Code.

Procedure in such cases within local limits of Supreme Court.

119. If the thing searched for be found within the local limits of a Supreme Court of Judicature,† it shall be taken to the Chief Commissioner of Police, or to a Police Magistrate, who shall act in the manner prescribed in the last preceding Section.

† Now High Court in a Presidency town.

The Chief Commissioner of Police or a Police Magistrate within the local limits of a High Court, is treated as a Magistrate of a District.

Magistrate may, when necessary, issue search warrant to be executed in the jurisdiction of another Magistrate.

120. In any case in which it may appear necessary, a Magistrate may, by the warrant, order search to be made in a place out of his jurisdiction, and may direct that the warrant be executed either after or without obtaining the endorsement of the Magistrate within whose jurisdiction the search is to be made. When a Magistrate issues a warrant under this Section, he shall inform the Magistrate within whose jurisdiction the house or place to be searched is situate; or if the house or place be situate within the local limits of any Supreme Court of Judicature,‡ he shall inform

‡ High Court in a Presidency town.

the Chief Commissioner of Police of the issue of such warrant.

* S. 15.

Magistrate may send search warrant by post to the Magistrate of another District.

† Ss. 14, 18.

Procedure to be observed by such Magistrate.

121. It shall be competent to a Magistrate* issuing a warrant for the search of any house or place out of the jurisdiction of the Magistrate of the District,† to direct the warrant to the Magistrate of the District† in which such house or place is situate, and to transmit the same by post. On receipt of the warrant by the Magistrate to whom it is directed, he shall endorse his name on the warrant, and enforce its execution in the same manner as if the warrant had been originally issued by himself. If the warrant is to be executed within the local limits of any Supreme Court of Judicature,‡ it shall be addressed to the Chief Commissioner of Police or to a Police Magistrate. In such case any property found on search made, may be dealt with as provided in Sections 118 and 119 of this Act.

‡ High Court in a Presidency town.

Persons in charge of dwelling-house, &c., to allow the search.

122. If the house or place to be searched is closed, it shall be the duty of any person residing in or in charge of such house or place, on demand of the Officer or other person executing the warrant, to allow such Officer or other person free ingress thereto, and to afford all reasonable facilities for a search therein.

A provision similar to that laid down in S. 93 for execution of warrants of arrest.

Place to be searched may be broken open.

123. A Police Officer, or other person authorized by a warrant to search any house or place, may break open any outer or inner door or window of the house or place, in order to execute such warrant, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

A similar provision is made by S. 94 for execution of warrants of arrest.

Breaking of zenana or female apartment.

124. If the place ordered to be searched is a zenana or apartment in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the Officer or other person charged with the execution of the warrant shall give notice to such woman in such zenana or apartment, not being a woman against whom a warrant of arrest has been issued, that

she is at liberty to withdraw, and, after giving such notice, and allowing a reasonable time for the woman to withdraw, and affording her every reasonable facility for withdrawing, such Officer or other person may enter such zenana or apartment for the purpose of completing the search, using at the same time every precaution consistent with these provisions for preventing the clandestine removal of property.

Search of house, &c., to be made in the presence of witness.

125. The search of any house or place under this Chapter shall be made in the presence of two or more respectable inhabitants of the place in which the house or place searched is situate, but such persons shall not be required to attend the Court of the Magistrate as witnesses, unless specially summoned by such Magistrate. The occupant of the house or place or some person in his behalf shall, in every instance, be permitted to attend during the search.

Occupant of the place searched may attend.

"Two or more respectable inhabitants of the place in which the house or place searched is situate." The Police should be careful to comply with this provision of the law. Disregard would give rise to suspicion as to the *bonâ fide* character of the search, and as to its having been conducted in the presence of "creatures" of the Police.

A Magistrate should ordinarily dispense with the attendance before him of witnesses to a house search, as they should be required to attend there, but they should not be subjected to unnecessary harassment, but recognizances may be taken for their attendance before the Court of Session.—3 W. E., 7 C. L.

Mode of searching females.

126. In any case in which it shall be necessary to cause a female to be searched, the search shall be conducted with strict regard to the habits and customs of the country.

Search of house, &c., suspected to contain forged documents, &c.

127. If the Magistrate of the District,* or a Magistrate† in charge of a division of a District,‡ upon information, and after such enquiry as he may think necessary, has reason to believe§ that any house or other place is used as a place for the deposit or sale of stolen property,[1] or for the deposit or sale or manufacture of forged[2] documents or counterfeit[3] Government Stamps or counterfeit[3] coin,[4] or instruments or materials for counterfeiting[3] coin[4] or for forging,[5] or that any forged[2] documents or counterfeit[3] stamps or false seals or any counterfeit[3] coin[4] or instruments or materials used for counterfeiting[3] coin,[4] or for forging,[5] are kept or deposited in any house or other place, he may by his warrant authorize

* Ss. 14, 18.
† S. 15.
‡ S. 18.
§ S. 26, P. C.
1 S. 410, P. C.
2 Ss. 470, 464, 463, 29. P. C.
3 S. 28, P. C
4 S. 230, P. C.
5 S. 463, P. C.

CH. VIII. Ss. 128—130.

any Police Officer above the rank of a constable, peon, or burkundaz to enter, with such assistance as may be required, and by force if necessary, any such house or other place, and to search all such parts of the same as shall be specified in the warrant, and to seize and take possession of any stolen property,[1] documents,[6] stamps, seals, or coins[4] therein found which he may reasonably suspect to be forged,[2] stolen,[1] false,[7] or counterfeit,[3] and also of any such instruments and materials as aforesaid.

1 S. 410, P. C. 6 S. 29, P. C. 4 S. 230, P. C. 2 Ss. 470, 464, 463, 29, P. C. 7 S. 464, P. C. 3 S. 28, P. C.

Magistrate may attend personally.

128. The Magistrate by whom a search warrant is issued, may attend personally for the purpose of seeing that the warrant is duly executed. The Magistrate may also direct a search to be made in his presence of any house or place, for the search of which he is competent to issue a search warrant.

A similar provision is made by S. 81 with regard to warrants of arrest.

Inspection of weights and measures used in shops.

129. An officer in charge of a Police Station may, without a warrant, enter any shop or premises, within the limits of such Station, for the purpose of inspecting or searching for any weights or measures or instruments for weighing used or kept therein, whenever he shall have reason to believe[8] that there are in such shop or premises any weights, measures, or instruments for weighing which are false. If such Police Officer shall find in such shop or premises any weights, measures, or instruments that are false, he may seize the same and shall forthwith give information of such seizure to the Magistrate having jurisdiction.

8 S. 26, P. C.

The Magistrate shall keep standards of such weights and measures as are used in retail dealings throughout the Districts under his charge, and they shall be open to the inspection of any one who may desire to examine them.—Reg. (Bombay) XII. 1817, S. 20.

Offences relating to weights and measures are provided for by Chapter XIII, Ss. 264, 267, Penal Code.

It should be noted that a Police Officer in charge of a Police Station can *alone* exercise this power of seizing false weights.

Procedure by Police Officer upon seizure of stolen property found on an offender.

130. The seizure by any Police Officer of property alleged or suspected to have been stolen,* or of property seized by any Police officer under circumstances which create suspicion of the committal of any offence, shall be forthwith reported to the Magistrate of

* S. 410, P. C.

the District,* who shall thereupon make such order respecting the custody and production of the property as he shall think proper.

* Ss. 14, 18.

Procedure if such property be unclaimed.

131. When any such property shall be unclaimed, the Magistrate of the District† may detain the same, and shall issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim to the property to appear and establish his claim thereto within six months from the date of such proclamation.

† Ss. 14, 18.

Act V. of 1861, S. 25, declares that "it shall be the duty of every Police Officer to take charge of all unclaimed property, and to furnish an inventory thereof to the Magistrate of the District. The Police Officers shall be guided as to the disposal of such property by such orders as they shall receive from the Magistrate of the District."

S. 26 repeats the provisions of S. 131 of the Code.

There is no special provision regarding the mode in which the proclamation under S. 131 shall be notified. The law has apparently left it to the discretion of such officers to give the matter that publicity which is essential for the ends of justice. It would, however, be well to follow, as much as possible, the provisions of S. 183, which enacts that the proclamation for an absconding party, against whom a warrant has been issued, "shall be publicly read in some conspicuous place of the town or village in which such person usually resides, and shall be affixed on some conspicuous part of the ordinary abode of such person, or on some conspicuous place of such town or village. A copy of the proclamation shall also be affixed on some conspicuous part of the Court-house of the Magistrate."

Procedure if no claimant appear within six months from date of proclamation.

132. If no person shall, within the period allowed, claim such property, and if the person in whose possession such property was found shall be unable to show that it was legally acquired by him, the property shall be at the disposal of the Government, and may be sold under the orders of the Magistrate of the District.

A similar provision is to be found in Act V. of 1861, S. 27.

It is, perhaps, unnecessary to observe here that the provisions of Ss. 131, 132, do not apply to *intestate property*, which must be forwarded without delay to the Civil Judge of the District with whom the disposal rests.

CHAPTER IX.—Ss. 133—162.

Preliminary Enquiry by the Police.

Police Officers to make enquiry into certain offences only when directed to do so by Magistrate.

133. No Police Officer shall, without an express order from a Magistrate,‡ enquire into or take cognizance of any offence punishable under the Indian Penal Code, other than the offences described in Column 3

‡ S. 15.

CH. IX. Ss 134 & 135.

of the Schedule annexed to this Act, as offences for which a Police Officer may arrest without warrant. But it shall be competent to a Magistrate,* upon the report of a Police Officer, or otherwise, to direct enquiry to be made by a Police Officer into any offence punishable under the Indian Penal Code, or under any special† or local‡ law.

* S. 15.

† S. 4.

‡ S. 5.

With the exception of the Magistrate of the District, no Magisterial Officers, whether in charge of a Sub-division or not, are vested with any controlling power over the Police. As Judicial Officers they will try all cases brought before them by the Police, and will issue processes in such cases, or in cases instituted before them, on the formal complaint of a private party. If a Subordinate Magistrate is of opinion that, in any case coming before him, the proceedings of the Police have been illegal, or evince negligence, or want of intelligence, he will report the matter for the information of the Magistrate of the District.—Resolution, Government, Bengal, Sept. 22, 1862.

Saving of powers vested in Police Officers by any special or local law.

134. Nothing in the last preceding Section shall be held to interfere with the exercise of any powers which are vested in a Police Officer by any special§ or local‖ law, or with the performance of any duty which is imposed upon a Police Officer by any special§ or local‖ law.

§ S. 4.

‖ S. 5.

Act V. of 1861, S. 34, is an important law in this respect.—See Note to S. 100 *ante*.

Upon complaint preferred, Officer in charge of Police Station to proceed in person or depute a subordinate Officer to make enquiry.

135. Upon complaint or information being preferred to an Officer in charge of a Police Station¶ of the commission within the limits of such Station of any of the offences specified in Column 3 of the Schedule annexed to this Act, as offences for which Police Officers may arrest without warrant, he shall send immediate intimation to the Magistrate having jurisdition, and shall proceed in person, or shall depute one of his subordinate Officers to proceed to the spot to enquire into the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and apprehension of the offender. Any Magistrate, on receiving intimation of the commission of any such offence, may at once proceed, or depute an Officer exercising any* of the powers of a Magistrate to proceed, to hold a preliminary enquiry into or otherwise to dispose of such case in the manner provided in this Act.

¶ S. 162.

* S. 17.

"He shall send immediate intimation to the Magistrate having jurisdiction." By this it is probably intended to refer to the Magistrate of the District or Magistrate in charge of a division of a District. By para. 2 of the Police Rules [See Appendix D.] issued by the Government of Bengal, it is ordered, that the information shall be sent in a prescribed form to the

District Superintendent of Police, and to the officer in charge of the Sub-district, by whom they will be submitted to the Magistrate of the District, and the Magistrate having jurisdiction, respectively.

The Police Officer is bound to reduce into writing every complaint or information preferred to him [S. 139], but the complainant cannot be examined on oath.—Calcutta Sudder Court, May 5th, 1862, and C. O. May 10th, 1862.

The fact that a Criminal charge has been made only before an Inspector of Police, who refused to act upon it, if that charge be proved to have been false and deliberately made, is sufficient to support a conviction under S. 211 of the Indian Penal Code. To constitute this offence, it is not necessary that the charge should be before a Magistrate. Nor is it necessary that the charge should have been fully heard and dismissed. It is sufficient if it appear that it is not pending under legal enquiry.—Surbanna Gaundan and others, (1, Madras,30). This view of the law has been quoted and followed by the Calcutta High Court.—4 W. R., 11 C. L. See also Bonomali Sonai, 5 W. R., 32.

Except in cases not of a serious nature where local enquiry not necessary.

136. Provided that when any complaint is made against any person by name, and the case is not of a serious nature, it shall not be incumbent on the Officer in charge of a Police Station* to proceed in person or to depute a subordinate Officer to make an enquiry on the spot, unless such local enquiry shall appear to be necessary.

* S. 162.

If Officer in charge of Police Station see no sufficient ground for an enquiry.

137. If, on any complaint or information being preferred to an Officer in charge of a Police Station,† it shall appear to such Officer that there is no sufficient ground for entering on an enquiry, or that the immediate apprehension of the accused is not necessary for the ends of justice, he shall abstain from proceeding in the case, and shall report the substance of the complaint or information for the orders of the Magistrate.

† S. 162.

All persons to give information of offences.

138. It shall be the duty of every person who is aware of the commission of any offence made punishable under Sections 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, or 460, of the Indian Penal Code, to give information of the same to the nearest Police Officer, whenever he shall have reason to believe that, if such information be withheld, the person who committed the offence may not be brought to justice, or may have his escape facilitated.

These offences are the following:—

382. Theft after preparation for causing death or hurt, &c.
392. Robbery.
393. Attempt to commit Robbery.
394. Robbery accompanied with hurt.
395. Dacoity.
396. Dacoity with murder.

397. Robbery or Dacoity, with attempt to cause death or grievous hurt, &c.

398. Attempt to commit Robbery or Dacoity, being armed with any deadly weapon.

399. Making preparation to commit Dacoity.

402. Assembling for the commission of Dacoity.

435. Mischief by fire, with intent to damage property to the amount of 100 Rupees or upwards.

436. Mischief by fire to a house, &c.

449. House trespass in order to the commission of an offence punishable with death.

450. House trespass in order to the commission of an offence punishable with transportation for life.

456. Lurking house trespass by night, or house breaking by night.

457. Lurking house trespass by night, or house breaking by night, in order to the commission of an offence punishable with imprisonment.

458. Lurking house trespass by night, or house breaking by night, after preparation made for causing hurt, &c.

459. Grievous hurt whilst committing lurking house trespass by night, or house breaking by night.

460. Being jointly concerned in the commission of lurking house trespass by night or house breaking by night, death or grievous hurt being caused or attempted.

It will be observed that regarding these offences a certain obligation is imposed *on the public*. There are, however, special laws imposing special obligation on zemindars and others connected with land which require mention.

Reg. (Bengal) VI. of 1810, S. 2, declares that "all zemindars, talookdars, "and other proprietors of lands, whether mâlgoozary or lakheraj, all sudder "farmers and under-renters of land of every description, all dependent "talookdars, all naibs and other local agents, all Native officers employed in "the collection of the revenues and rents of lands on the part of Government "or of the Court of Wards, are especially accountable for the early and punc- "tual communication to the Magistrates and Police Darogahs, either publicly "or secretly, as the informants may judge proper, of all intelligence which they "may obtain respecting the resort to any place within the limits of any estate "or farm held or managed by them, of any person or persons of the different "classes of people ordinarily known by the appellation of dacoits, cozauks, "thugs, or budducks, or of any other description of robbers."

Similar obligations are imposed on the above-mentioned persons as to the giving of information regarding the residence of any notorious receiver or vendor of stolen property (Reg. [Bengal] I. of 1811, S. 10); regarding the commission of robberies, and likewise regarding the offence of breaking into houses, tents, or boats or other places of habitation (Reg. [Bengal] III. of 1812, S. 4, cl. 2); regarding the commission of murders, and likewise regarding the offences of arson and theft (Reg. [Bengal] VIII. of 1814, S. 2); regarding any intended Suttee (Reg. (Bengal) XVII. of 1829, S. 3, cl. 1, which extends this responsibility also to all munduls and other heads of villages). A special obligation is imposed on land-holders and farmers of land in Bengal by Reg. XXII. 1793, S. 3, which declares that if it be proved that such persons have connived at robberies committed in their estates or farms, or have received any part of the property stolen or plundered, or have harboured the offenders, or aided or refused to give effectual assistance to prevent their escape, or have omitted to afford every assistance in their power to the officers of Government for their apprehension, they will be subject to be prosecuted personally for the crime or offence before the Court of Circuit, and, if convicted, their lands and effects will be liable to be sold, at the discretion of the Governor-General in Council, to make good the value of the property stolen or plundered to the owner.

Reg. (Bengal) XX. 1817, S. 21, cl. 5, imposes upon village watchmen the duty of conveying to the Thannah (Police Station) immediate intelligence of any robbers who may have concealed themselves in their respective villages or in the adjacent country, and also of any vagrants or other persons who may,

be lurking about the country without any ostensible means of subsistence, and who cannot give a satisfactory account of themselves.

It is likewise the duty of village watchmen to convey early intimation to the Thannah of all murders, robberies, burglaries, thefts, violent affrays, and other heinous offences perpetrated in the villages or places in which they may be stationed.

S. 154, Penal Code, requires the owner or occupier of land upon which an unlawful assembly (S. 141) is held, or a riot (S. 146) is committed, and also any person having or claiming an interest in such land, to give the earliest notice thereof to the principal officer at the nearest Police Station, as well as to prevent it, or to disperse or suppress the riot or unlawful assembly under a penalty of fine of 1,000 Rupees.

The intentional omission to give information on any subject to any public servant on the part of any person legally bound so to do is made punishable by S. 176, Penal Code; and if such information respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, the punishment is enhanced. Under S. 202, if such a person knows, or has reason to believe, that the offence has been committed, he is also made punishable for the omission to give information.

The meaning of the term "offence" in these Sections was restricted by S. 40 to "a thing made punishable by the Indian Penal Code;" but Act IV. of 1867, S. 1, has declared that it shall be construed as including anything made punishable also by any special or local law when that thing is punishable with imprisonment for a term of six months or upwards, whether with or without fine.

Complaint, &c., to be in writing.

139. Every complaint or information preferred to an Officer in charge of a Police Station,* shall be reduced into writing, and the substance thereof shall be entered in a diary to be kept by such Officer, in such form as shall be prescribed by the Local Government.

* See S. 162.

A complaint to a Police Officer should not be made on oath. If it be false, it cannot, therefore, be made the subject of a charge under S. 193, Penal Code, but it might come under S. 182 or S. 211.—Calcutta Sudder Court, 324, 1862. A Sessions Judge cannot, as a general rule, require that a complaint or information thus reduced to writing, should be filed with the record, when the case is sent up to him for trial. The substance being entered in the diary of a Police Officer, a Sessions Judge may order a Magistrate to forward the diary for his inspection, and he may summon the Police Officer, under S. 367, to appear with the original writing which embodied the complaint.—*Id.* 917, 1863: but summons on a Police Officer to appear as a witness should be served on him through the Superintendent of the District, or the Assistant in charge of the Sub-division to which he may belong—*Id.* Cir. 14, 1866.

Procedure when a Police Officer deputes another.

140. When any Officer in charge of a Police Station† requires any Officer subordinate to him, to make without a warrant an arrest which may lawfully be made by such Officer without a warrant, he shall deliver to the Police Officer required to make such arrest, an order in writing,‡ specifying the person to be arrested, and the offence for which the arrest is to be made.

† See S. 162.

‡ S. 10.

This would refer to the cases specified in Ss. 100 and 101, and to cases under enquiry regarding offences specified in Col. 3 of the Schedule as offences for which a Police Officer may arrest without a warrant, a complaint or inform-

CH. IX. Ss. 141 & 142.

ation having been preferred regarding the same. A Police Officer cannot issue a summons or warrant. Their process is "an order in writing."—Jud. Comr., Punjab, Cir. 8, 21st January, 1862.

Police may pursue offenders into other jurisdictions.

141. It shall be lawful for a Police Officer to pursue, with a view to arrest, any person accused of any of the offences specified in Column 3 of the Schedule annexed to this Act, as offences for which Police Officers may arrest without a warrant, into the limits of another Police Officer, whether subordinate to the same Magistrate as himself, or to the Magistrate of any District,* and whether such place be under the same Local Government or not.

* S. 18.

Issue of search warrants by Officer in charge of Police Station.

142. Whenever an Officer in charge of a Police Station† shall consider that the production of any thing is essential to the conduct of an enquiry into any offence which he is authorized to investigate, it shall be lawful for him to search or cause a search to be made for the same, in any house or place within the limits of such Station. In such case, the Officer in charge of the Police Station shall, if practicable, conduct the search for such thing in person. If unable to conduct the search in person, and there is no other person competent to make the search present at the time, it shall be lawful for the Officer in charge of the Police Station to require any Officer subordinate to him to make the search, and he shall deliver to such Officer an order in writing,‡ specifying the property for which search is to be made, and the house or place to be searched; and it shall thereupon be lawful for such subordinate Officer to search for such property in such house or place. The provisions of Sections 122, 123, 124, and 125 of this Act, relating to search warrants, shall be applicable to a search made by or under the direction of an Officer in charge of a Police Station under this Section.

† S. 162.

‡ S. 10.

The process which a Police Officer is competent to issue is not a summons or warrant, but "an order in writing."—Jud. Comr., Punjab, Cir. 8, 21st January, 1862.

The law, it will be observed, is very strict in requiring such a search to be made by a superior Police Officer. It is lawful for a subordinate Police Officer to conduct such a search only if the superior Officer be unable personally to conduct it, and there is no other person competent to make the search present at the time; and he must even then obtain an order in writing, specifying the property for which search is to be made, and the house or place to be searched.

A Police Officer can *proprio motu*, *i. e.*, without a search warrant from a Magistrate, search a house or place only within the limits of his own Station.

If, however, he holds a search warrant, he is invested with higher authority.—See Ss. 117 and 118.

143. An Officer in charge of a Police Station* may require an Officer in charge of another Police Station, whether subordinate to the same Magistrate as himself, or to a Magistrate of another District, to cause a search to be made in any house or place in any case in which he might cause such search to be made within the limits of his own Station.

When one Officer of a Police Station may require another to issue a search warrant.

* S. 162.

144. An Officer in charge of a Police Station† may, by an order in writing,‡ require the attendance before himself of any person, being within the limits of his Station, who, from the statement of the complainant or otherwise, appears to be acquainted with the facts and circumstances of any case into which he is enquiring under Section 135 of this Act, and such person shall be bound to obey such requisition.

Witnesses to be summoned.

† S. 162.

‡ S. 10.

A Police Officer is not competent to issue a summons or warrant, but "an order in writing."—Jud. Comr., Punjab, Cir. 8, January 21st, 1862.

The persons so ordered to attend are bound to obey the order, but in no case can a Police Officer compel a witness, by force, to attend before him.—Cal. High Court, Behary Singh, 7 W. R., 3.

145. It shall be lawful for an Officer in charge of a Police Station, or other Police Officer making an enquiry, to examine orally any person who is supposed to be acquainted with the facts and circumstances of the case. Nothing in this Section shall preclude such Police Officer from reducing into writing any statement made by the person so examined. Provided that any statement so reduced into writing shall not be signed by the person making it, nor shall it be treated as part of the record, or used as evidence.

Oral examination of witnesses by Police.

Proviso.

As the Code of Criminal Procedure does not provide for the administering of an oath by a Police Officer, it is evidently the intention of the Legislature that such should not be administered.—Calcutta Sudder Court Circular, 10th May, 1862.

[Under the now repealed law, Regulation XX. of 1817, S. 13 (Bengal Code), the complainant used to be examined on oath by the Police, but not the witnesses. It was optional with the Police to take down in writing the statements of witnesses in detail, but they were bound to enter in their report the substance of all material information received from witnesses.

A dying declaration, reduced to writing by the Police, is not evidence in a case. The fact that it was really made, and its substance, must be proved on oath by the witnesses.—Jud. Comr., Cent. Prov., Feb. 3rd, 1863.

In connection with the permission thus given under certain restrictions to a Police Officer to reduce to writing any statement made to him by a person

acquainted with the facts and circumstances of a case under enquiry, and a subsequent examination of such Police Officer on the trial, Act II. of 1855 S. 45, should be noted. "A witness shall be allowed before any Court to refresh his memory by any writing made by himself, or by any other person when the fact occurred, or immediately afterwards, or at any time when the fact was fresh in his memory, and he knew that the same was correctly stated in writing. In such case the writing shall be produced, and may be seen by the adverse party, who may, if he choose, cross-examine the witness upon it." The notes made by Police Officer should not be looked at by him, in order to refresh his memory, until they have been verified. He may then look at them and give his evidence on the point entered in them; but the notes themselves, by being used to refresh memory, do not thereby become evidence.—Calcutta High Court, 4 W. R., 8 C. L.

146. No Police Officer or other person shall offer any inducement to an accused person, by threat or promise, or otherwise, to make any disclosure or confession.

No inducement to be offered to accused person to confess.

Obtaining such a disclosure by hurt or grievous hurt, is punishable under Ss. 330 and 331, Penal Code.

S. 98 contains a similar prohibition, with respect to *persons arrested*, but it concludes with declaring that "no Police Officer or other person shall "prevent the persons arrested by any caution or otherwise from making "any disclosure which he may be disposed to make of his own free will."

In the case of Durma Dutt Ojha (8. W. R., 13), it appeared that the prisoners confessed, on being told by the Police Officer that he would get them released if they told the truth. The Calcutta High Court severely condemned such conduct, as highly improper and illegal, holding also that no part of the Police Officer's evidence, as to the discovery of facts in consequence of the confessions, was legally admissible.

147. No Police Officer shall record any statement or any admission or confession of guilt, which may be made before him by a person accused of any offence. Provided that nothing in this Section shall preclude any Police Officer from reducing any such statement or admission or confession into writing for his own information or guidance.

Police Officer not to record confession.

Proviso.

148. No confession or admission of guilt made to a Police Officer shall be used as evidence against a person accused of any offence.

Confession made to a Police Officer shall not be used as evidence.

149. No confession or admission of guilt made by any person, whilst he is in the custody of a Police Officer, unless it be made in the immediate presence of a Magistrate,* shall be used as evidence against such person.

Confession made while the accused is in custody of the Police shall not be used as evidence.

* S. 15.

In order to give weight to confessions recorded under S. 149, there should always be a judicial record of the special circumstances under which such confessions were received by the Magistrate, showing in whose custody

the prisoners were, and how far they were quite free agents.—Calcutta High Court, Kodal Kahar, 5 W. R., 6.

150. When any fact is deposed to by a Police Officer as discovered by him in consequence of information received from a person accused of any offence, so much of such information, whether it amounts to a confession or admission of guilt or not, as relates distinctly to the fact discovered by it, may be received in evidence.

Police Officer may give in evidence so much of any statement or confession made by the accused as relates distinctly to a fact thereby discovered.

For example, suppose that a prisoner has said to a Police Officer—"I concealed the articles which I got in dacoity A under my stock of straw, and those which I got in Dacoity B under the floor of my cow-house." As long as such information relates distinctly to the finding of the articles in consequence of it, it may be received as legal evidence.—Calcutta High Court, 8 W. R., 17 C. L.

Where the Police Officer obtained certain stolen property from a prisoner, by telling him that he could get him off, it was held that, having been obtained by persuasion and offer of immunity in direct contravention of S. 146, the admission was not receivable as evidence.—Calcutta High Court, Bishoo Manjee, 12th Feb. 1866.

151. If the person arrested appears, from the information obtained, to have committed the offence charged, and the offence is not bailable, the Officer in charge of the Police Station* shall forward him under custody to the Magistrate having jurisdiction in respect of the offence, and shall bind over the prosecutor and witnesses to appear on a fixed day before such Magistrate. When any subordinate Police Officer has made any enquiry under this Chapter, he may be required by the Officer in charge of the Police Station to submit a report of such enquiry to him, or may do so without such instructions, and the Officer in charge of the Police Station shall then proceed as if he had made the enquiry himself.

Enquiry by the Police.

* See S. 162.

"The Magistrate having jurisdiction." This would probably refer to the Magistrate of the District, or the Magistrate in charge of a division of a District, or the Magistrate who, under S. 133, may have directed the enquiry to be made.

The evidence found by the Police should be sent in as found, and not kept until it is all complete.—Kodal Kahar, 5 W. R., 6.

The prosecutor and witnesses should be required to attend on an early date. An interval of one month was severely censured.—Bheem Manjee, 6 W. R., 52.

152. No Police Officer shall, without the special order of a Magistrate, detain an accused person in custody for a longer period than, under all the

Accused not to be detained by the Police beyond 24 hours without special authority.

CH. IX. S. 153.

circumstances of the case, is reasonable : such period in no case to exceed twenty-four hours. If the enquiry has not been completed within twenty-four hours, the Officer in charge of the Police Station shall, nevertheless, forward the accused to the Magistrate with a short despatch, stating the offence for which the accused has been arrested, if there are grounds for believing that the accusation is well founded.

As to what constitutes a detention by the Police, the Calcutta High Court, in the case of Behary Singh and others (7 W. R., 4), held that if, as is frequently the case, a Police Officer, without arresting a person himself, directs some of the neighbours to take charge of him, he is responsible in the same way as if he had himself made the arrest, the person arrested being in law in his custody. In the case of Puran Kusam Narasaya Pautula (2 Madras, 396), the Madras High Court held that the requiring of the attendance of a certain person by letter, and the deputing of two Constables to accompany him, under the allegation that their duties were to prevent him from speaking to any one, amounts to an arrest and imprisonment.

In the appeal of a Police Officer convicted of wrongful confinement (S. 340, Penal Code), the Calcutta High Court held that a Police Officer is not empowered, by S. 152 of this Code, to detain without question an accused person for a period not exceeding 24 hours, but he is rather in no case justified in detaining a person for one single hour, except on some reasonable grounds warranted by the circumstances of the case. The time during which a person is wrongfully confined by a Police is material only in fixing the punishment for the offence.—Sheoprosunno Ghosal, 6 W. R., 88. In another case, in which the Police Officer had been punished under S. 29, Act V. of 1861, for having detained an accused person more than 24 hours, the Calcutta High Court held that, as the detention was not continuous, the Police Officer had committed no offence.—Indrobee Shaha, 1 W. R., 5.

Under no circumstances can an accused person be detained for more than 24 hours without the special order of a Magistrate : and, unless that special order be obtained, he *must*, at the expiration of that period, be either sent in to the Magistrate, or be discharged, any further detention being unlawful. As to the *place* of confinement, the Court remarked that, though the Code was not so express on this point as on the *duration* of the confinement, it was perfectly clear that it was intended that, when a Police Officer arrested any person, the prisoner should not be kept in confinement in any place which the subordinate Officer might select, but he should be sent immediately to the Police Station, and there kept in the custody of the Officer in charge of the Station, who is the person entrusted by the law with the conduct of the enquiry.—Calcutta High Court, Behary Singh and others, 7 W. R., 3.

Police how to proceed in cases of deficient evidence.

153. If it shall appear to the Officer in charge of the Police Station* that there is not sufficient evidence or reasonable ground of suspicion to justify the transmission of the accused person to the Magistrate, he shall release the accused on bail, or on his own recognizance, to appear when required, and shall submit a report of the case for the orders of the Magistrate.

* See S. 162.

For the form prescribed by the Government of Bengal for this report, and for the instructions as to its preparation, see Appendix D.

154. A Police Officer making an enquiry under this Chapter, shall day by day enter his proceedings in a diary, setting forth the time at which the complaint or other information reached him, the time at which he began and closed his enquiry, the place or places visited by him, and a statement of the circumstances elicited by his enquiry, and shall forward day by day a copy of such diary to the District Superintendent of Police, who shall without delay bring to the notice of the Magistrate of the District* any part of such diary which he shall consider it to be important that such Magistrate shall know. The Magistrate of the District* shall be entitled to call for and inspect such diary. In cases where there is no District Superintendent of Police, the Police Officer shall forward day by day a copy of the diary to the Magistrate of the District.* Such diary shall not be evidence of the facts stated therein, except against the Police Officer who made it.

Daily record of proceedings.

* Ss. 14, 18.

The records of the Police proceedings should not be filed with the record of a Criminal case, as they are not legal evidence. The proper course is to summon the Police Officer to produce the record of his daily proceedings kept under S. 154, and, on his appearance, to examine him on the matter which it is required to elicit, giving him an opportunity, after the record has been proved to be what it is represented to be, and if it be necessary, to refresh his memory by looking at it, and to tell the Court what it contains. The Police Officer's report is then legal evidence, and the object of the Court will be fully attained (4 W. R., 8 C. L.); but it has also been held (8 W. R., 2 C. L.) that even under such circumstances a Police diary was no legal evidence, as S. 154 especially provided to that effect. However, in the case of Hurdut Surma (8 W. R., 68), in which a Police Officer was charged under Ss. 201 and 208, Penal Code, it was held that the diaries of other Police Officers were no evidence against the officer under trial, but that, being memoranda recorded at the time of the occurrence of the events to which they related, they might properly have been put into the hands of the persons who made them, in order that they might refresh their memories from them. These persons, however, had not been examined in the case.

155. The enquiry shall be completed without unnecessary delay, and, as soon as it is completed, the Police Officer making the enquiry shall forward to the Magistrate a report in such form as shall be prescribed by the Local Government, setting forth the names of the parties, the nature of the complaint, and the names of the witnesses, without any expresssion of opinion as to the guilt of the accused person, and shall also transmit any weapon or article which it may be necessary to produce before the Magistrate. The Police Officer shall state whether the accused person has been forwarded in custody, or

Report of Police Officer of what to consist.

has been released on bail or on his own recognizance. If the accused person be detained in custody, he shall state the fact and the cause of his detention.

For the forms prescribed by the Government of Bengal for Police reports and for instructions as to their preparation, see Appendix D.

Bail.

156. A person accused of any offence entered as not bailable in Column 5 of the Schedule annexed to this Act, shall not be admitted to bail, if there appear reasonable ground for believing that he has been guilty of the offence imputed to him. But a person accused of any other offence shall be admitted to bail, if sufficient bail be tendered for appearance before the Magistrate having jurisdiction in respect of the offence.

Bail not to be excessive. Terms of security.

157. The bail to be taken under the last preceding Section shall not be excessive; and the surety or sureties shall bind himself or themselves under a specific penalty to produce the accused person before the Magistrate, on or before a fixed day, to answer the complaint.

Prosecutors and witnesses to execute recognizances to appear before the Magistrate.

158. Every prosecutor and witness, whose attendance before the Magistrate may be deemed necessary by the Police Officer making the enquiry, shall execute a recognizance in the form (E) given in the Appendix, or to the like effect, for appearance before the Magistrate having jurisdiction in respect of the offence on a fixed day, which shall be the day whereon the accused person is to appear, if he shall have been admitted to bail, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in cutody. The Officer in whose presence the recognizance is executed, shall forward it with his report to the Magistrate, and shall deliver to the prosecutor and witnesses a duplicate of the despatch. The prosecutor or witnesses, unaccompanied by any Police Officer, shall be required to deliver in person such duplicate to the Magistrate.

The evidence should be sent in as found, and should not be kept by the Police until they have made it all complete.—Kodai Kuhar, 5 W. R., 6.

S. 221 declares that "the power given by the two preceding Sections" [*i. e.*, Ss. 219, 220] "may be exercised by every Criminal Court in every case in which a personal recognizance or bail has been given for the appearance of a party or witness, if default is made by the non-appearance of such party or witness before such Court, according to the conditions of such recognizance or bail." By S. 219, "whenever by reason of default of

appearance of the person executing the personal recognizance, the Magistrate shall be of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance, he shall proceed to enforce the penalty by the attachment and sale of the moveable property belonging to such person, which may be found within the jurisdiction of the Magistrate of the District." S. 220 lays down the course to be followed in enforcing payment from sureties.

Prosecutors and witnesses not to be subjected to restraint.

159. A Police Officer shall not subject any prosecutor or witness to restraint or unnecessary inconvenience, nor require them to give any other security for their appearance than their own recognizances; but if any prosecutor or witness shall refuse to attend, or to execute the recognizance directed in the last preceding Section, it shall be competent to the Officer* in charge of a Police Station to forward such prosecutor or witness under custody to the Magistrate, who may detain such prosecutor or witness in custody, until he shall execute such recognizance, or until the hearing before the Magistrate.

Recusant prosecutor or witness may be forwarded in custody.

* S. 162.

Police to report all apprehensions.

160. Officers† in charge of Police Stations shall report to the Magistrate of the District‡ the cases of all persons apprehended within the limits of their respective Stations, whether such persons shall have been admitted to bail or otherwise; and no person who has been apprehended shall be discharged, except on bail, or on his own recognizance, or under the special order of a Magistrate.

† S. 162.

‡ Ss. 14, 18.

A non-observance of this Section would render a Police Officer punishable under S. 217, Penal Code.

Police to make immediate enquiry and report on unnatural and sudden deaths.

161. It shall be the duty of the Officer§ in charge of a Police Station, on receiving notice or information of the unnatural or sudden death of any person, immediately to give intimation to the nearest Magistrate, and to proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, to make enquiry, and report the apparent cause of death, describing any mark of violence which may be found on the body, and stating in what manner or by what weapon or instrument such mark appears to have been inflicted. The report shall be signed by such Police Officer and other persons, or by so many of them as shall concur therein, and shall be forthwith forwarded to the Magistrate. When there may be any doubt regarding the cause of death, such Police Officer shall forward the body with a

§ S. 162.

CH. IX. S. 162.

view to its being examined by the Civil Surgeon, if the state of the weather and distance will admit of its being so forwarded without risk of putrefaction on the road. In the Presidencies of Madras and Bombay it shall be the duty of the Head of the Village in like manner to make the enquiry and report as aforesaid.

Magistrates should be careful that, in every case of suspected death, the body is taken *direct* to the Civil Surgeon by the Police, who should lose no time in despatching it, with such information as to the history of the case, symptoms, &c., as can be procured without the occurrence of delay. After the Civil Surgeon, on completion of the *post mortem* examination, and preparation of the subjects for despatch to the Chemical Examiner, has communicated the necessity for such despatch to the Magistrate, the latter will prepare the report of the circumstances attending the death as they can be ascertained. The Magistrates should instruct the Police that, after the despatch of the body with the requisite information to the Civil Surgeon, they are to abstain from further communication with that officer, except through the Magistrate.—Agra Sudder Court, Cir. 11, 1866.

In cases of suspected poisoning, the following points should be enquired into, and their answers embodied in the reference to the Chemical Examiner:—

1. What interval was there between the last eating or drinking, and the first appearance of the symptoms of poisoning?

2. What interval was there between the last eating and drinking and death (if this occurred)?

3. Did the person move, and, if so, how far from the place when the first symptoms were noticed?

4. What were the first symptoms?

5. Did vomiting or purging occur?

6. Did the person become drowsy, or fall asleep?

7. Were cramps or twitching of the limbs observed; or was tingling in the skin or throat complained of?

8. Any other symptom noticed should be mentioned.—Agra Sudder Court, Cir. 11, 1866.

The Jud. Comr., Punjab, [10th January, 1862] instructed the Police to hold enquiries in all cases of unnatural or sudden death; but if the homicide did not appear to have been culpable [S. 299, Penal Code], he directed them not to interfere or mulct the perpetrator.

The Government of Bengal has ordered that, on the occurrence of a Railway accident, the inquest or other investigation shall be conducted by the District Superintendent of Police in person, and the judicial investigation by the Magistrate at the nearest Railway Station to the scene of accident.—Government Order, 8th September, 1865.

By whom the powers of the Officer in charge of Police Station may be exercised in his absence or illness.

162. The powers to be exercised by an Officer in charge of a Police Station under this Chapter, shall be exercised in the event of his absence or illness by the Police Officer next in rank present at the Police Station, above the rank of a constable, peon, or burkundaz.

CHAPTER X.—Ss. 163—165.

Of Contempts and Disobedience of Orders.

Procedure in certain cases of contempt.

163. When any such offence, as is described in Sections 175, 178, 179, 180, or 228 of the Indian Penal Code, is committed in the view or presence of any Civil, Criminal, or Revenue Court, it shall be competent to such Court to cause the offender, whether he be a European British subject or not, to be detained in custody ; and at any time before the rising of the Court on the same day to take cognizance of the offence, and to adjudge the offender to punishment by fine not exceeding two hundred Rupees, or by imprisonment in the Civil Jail for a period not exceeding one month, unless such fine be sooner paid. In every such case the Court shal record the facts constituting the contempt, with any statement the offender may make, as well as the finding and sentence. If the Court, in any case, shall consider that a person accused of any offence above referred to should be imprisoned, or that a fine exceeding two hundred Rupees should be imposed upon him, such Court, after recording the facts constituting the contempt, and the statement of the accused person as before provided, shall forward the case to a Magistrate, or, if the accused person be a European British subject, to a Justice of the Peace, and shall cause bail to be taken for the appearance of such accused person before such Magistrate or Justice of the Peace, or, if sufficient bail be not tendered, shall cause the accused person to be forwarded under custody to such Magistrate or Justice of the Peace. If the case be forwarded to a Magistrate, such Magistrate shall proceed to try the accused person in the manner provided by this Act for trials before a Magistrate, and it shall be competent to such Magistrate to adjudge such offender to punishment, as provided in the Section of the Indian Penal Code under which he is charged. If the case be forwarded to a Justice of the Peace, such Justice of the Peace shall enquire into the circumstances, and shall have the same powers of punishing the offender as are vested by the Statute 53 George III., c. 155, s. 105, in a Justice of the Peace for the punishment of an assault, and may deal with the offender

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in the same manner as is provided in that behalf in the said Statute. If such Justice of the Peace shall consider the offence to require a more severe punishment than a Justice of the Peace is competent to award under the said Statute, he may commit the offender to a Supreme Court of Judicature.* In no case tried under this Section shall any Magistrate adjudge imprisonment or a fine exceeding two hundred Rupees for any contempt committed in his own presence against his own Court.

* Now High Court in Presidency towns.

A contempt is by law made promptly punishable by the Court before which it is committed, but where a Magistrate, to whom the case has been referred, refuses to act, and the Court referring the case takes no further notice, another and a superior Court cannot revive the matter.—Cal. High Court, 3 W. R, 11 C. L.

A similar enactment is contained in Act XXIII. of 1861, S. 21, specially for Civil Courts.

S. 175, Penal Code, relates to the omission to produce a document before a public servant by a person legally bound to produce such document.

S. 178 relates to the refusal of a person to bind himself by an oath to state the truth, when duly required so to bind himself by a public servant.

S. 179 relates to the refusal of a person, legally bound to state the truth, to answer any question put to him by a public servant in the exercise of his legal powers.

S. 180 relates to the refusal of a person to sign a statement made by him on lawful demand of a public servant.

S. 228 relates to an intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.

The punishment prescribed by 52 George III. c. 155, S. 105 [see Appendix B], is a fine of 500 Rupees, or, in default of payment or realization, imprisonment for two months. Sentences passed under this Statute are, by S. 410, appealable to the "Court of Session having jurisdiction at the place at which the appeal would have been heard, had the sentence been passed by a Magistrate subordinate to such Court." It is further declared that "cases appealed under this Section shall not be afterwards liable to revision by means of a writ of certiorari: Provided that nothing in the Section shall be held to take away the power of quashing any conviction by means of a writ of certiorari in any other case than when there has been such an appeal as aforesaid."

Discharge of an offender on his submission.

164. When any person has been sentenced to punishment, or forwarded to a Magistrate or Justice of the Peace for trial, under the last preceding Section, for refusing or omitting to do anything which he was lawfully required to do, it shall be competent to the Court to discharge the offender, or to remit the punishment, on the submission of the offender, to the order or requisition of such Court.

A similar provision is made by S. 22 Act XXIII. of 1861 especially for Civil Courts.

Procedure in all except certain cases when the offender is a European British subject.

165. When any such offence as is described in Chapter X. of the Indian Penal Code, except Sections 175, 178, 179, and 180, is committed in contempt

of the lawful authority of any Civil, Criminal, or Revenue Court, by a European British subject, such offence shall be cognizable only by a Magistrate who is a Justice of the Peace, and such Magistrate shall have the same powers of punishment for such offence as are vested by the Statute 53 George III. c. 155, s. 105, in a Justice of the Peace for the punishment of an assault, and may deal with the offender on conviction in the same manner as is provided in that behalf in the said Statute. If such Magistrate shall consider the offence to require a more severe punishment than a Justice of the Peace is competent to award under the said Statute, he may commit the offender to a Supreme Court of Judicature.*

* Now High Court in Presidency towns.

Chapter X. of the Indian Penal Code, Ss. 72—190, relates to "contempts of the lawful authority of Public servants."

See Note to S. 163.

S. 410 provides for appeals against orders passed under S. 165.

CHAPTER XI.—Ss. 166—178.

PROSECUTIONS IN CERTAIN CASES.

Prosecutions for certain offences not to be instituted but under authority of Government or of a duly empowered Officer.

166. A charge of an offence punishable under Chapter VI.† of the Indian Penal Code, except Section 127, shall not be entertained by any Court, unless the prosecution be instituted by order of, or under authority from, the Governor-General of India in Council, or the Local Government, or some Officer empowered by the Governor-General in Council to order or authorize such prosecution, or unless instituted by the Advocate-General.

† *i. e.*, offences against the State

S. 127, Penal Code, relates to the receipt of property, knowing the same to have been taken in war against an Asiatic power in alliance or at peace with the Queen, or by depredation on the territories of such power.

Prosecution against Judges, &c.

167. A charge of an offence punishable under the Indian Penal Code, of which any Judge‡ or any public servant§ not removable from his office without the sanction of the Government, is accused as such Judge‡ or public servant,§ shall not be entertained against such Judge‡ or public servant,§ except with the sanction, or under the direction, of the Local Government, or of some Officer empowered

‡ S. 19, P. C.
§ S. 21, P. C.

CH. XI. S. 168.

by the Local Government, or of some Court or other authority to which such Judge* or public servant† is subordinate, and whose power so to sanction or direct such prosecution the Local Government shall not think fit to limit or reserve.

* S. 19, P. C.
† S. 21, P. C.

The Calcutta High Court has declared [Cir. 20, 1864] that this Section relates to offences specified in Chapter IX. of the Indian Penal Code, and to no other. Offences committed against the person or property of individuals by one who happens to be a public servant are not necessarily committed by him *as such public servant* in the sense in which these words are used in the Penal Code: and, unless committed in that character, must be regarded as the acts of *individuals in their private capacity*; charges, therefore, founded on such acts do not need the sanction of Government or other competent authority, before they can be entertained by a Criminal Court, but should be dealt with in the same way as charges against individuals ordinarily are.

Prosecution for certain offences under Chapter X. of the Penal Code not to be instituted, but with sanction of the public servants concerned.

168. A charge of a contempt of the lawful authority of any Court or public servant,‡ or of any other offence against a public servant as such, described in Chapter X. of the Indian Penal Code, not falling within Section 163 of this Act, shall not be entertained in any Criminal Court,§ except with the sanction or on the complaint of the Court or public servant concerned, or, if such servant is an inferior ministerial servant, with the sanction or on the complaint of his official superior. The prohibition contained in this Section shall not apply to the offences described in Sections 189 and 190 of the Penal Code.

‡ S. 21, P. C.

§ S. 11.

The term "any Court" here used requires definition. It may denote any Civil or Criminal Court, as throughout this Chapter these words are coupled together, or it may also include a Revenue Court.—[See S. 163].

Chapter X. of the Indian Penal Code relates to "contempts of the lawful authority of public servants."

S. 189 refers to the holding out of a threat of injury to a public servant, or to a person in whom the public servant is believed to be interested, for the purpose of inducing him to do or to forbear, or de[illegible] to do, any act connected with his public functions.

S. 190 refers to the holding out of any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given.

Certain persons having intentionally omitted to attend in person at a certain time and place, as directed by a Deputy Magistrate, were prosecuted and convicted by him under S. 174, Penal Code. The Calcutta High Court held that there was nothing irregular in the proceedings of the Deputy Magistrate in taking up the case without any reference to the Magistrate of the District.—Baijoo Baut and others, 8 W. R., 62.

In the case of Khal Mahato (3rd Feb. 1868), the Court stated that, as a general rule, it is very objectionable for the same Officer who entertains a charge under S. 168 of the Code of Criminal Procedure, of an offence against any Court or public servant, to make over such case for trial to himself as Magistrate.

Where the contempt had been committed upon an Officer who was both Magistrate and Collector, but while acting in the latter capacity, and he convicted the offender as Magistrate, the Calcutta High Court held that the mere omission to sign himself a Collector, when ordering the trial, was not in itself sufficient to vitiate the proceedings which were in other respects perfectly legal.—Gooroo Churn Mojoomdar, 2 W. R., 52.

Prosecution for certain offences against public justice not to be instituted but with sanction of the authority before which the offence was committed.

169. A charge of an offence against public justice, described in Sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228, of the Indian Penal Code, when such offence is committed before or against a Civil or Criminal Court,* shall not be entertained in the Criminal Courts,* except with the sanction of the Civil or Criminal Court before or against which the offence was committed, or of some other Court to which such Court is subordinate. Such sanction may be given at any time.

* S. 11.

Act XXIII. of 1861, S. 16, specially provides for such offences, [excepting offences falling under Ss. 211 and 228], when they may appear to a Civil Court to have been committed in any case pending before it. S. 169, however, enhances the powers conferred on Civil Courts by that law.

Ss. 193, 194, 195, Indian Penal Code, relate to the giving or fabricating of false evidence; but the two last prescribed an enhanced punishment if there be an intention to cause, or a knowledge that such act will be likely to cause, a person to be convicted: S. 196 relates to the corrupt using of false or fabricated evidence: S. 199 relates to the making a false statement in a declaration which is by law receivable as evidence on a point material to the object for which such declaration is made or used: S. 200, to the corrupt using or attempt to use such declaration: S. 205, to false personation for the purpose of any act or proceeding in a suit: S. 206, to the fraudulent removal or concealment of property to prevent its seizure as a forfeiture, or in execution of a decree: S 207, to a fraudulent receipt of or claim to such property: S. 208, to a fraudulent suffering a decree for a sum not due: S. 209, to the fraudulent, dishonest, or malicious making of a false claim in a Court of Justice: S. 210, to the fraudulent obtaining of a decree for a sum not due: S. 211, to the making of a false charge with intent to injure: S. 228, to an intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.

Before sanctioning Criminal proceedings, a Court should satisfy itself that there are good *primâ facie* grounds for the same.—Nowarish Ahmed Ali Khan, 2 Agra, 318. The power should be exercised with the greatest caution, and not for prosecuting a person for want of accuracy in mere matters of detail when the main story told by him is believed.—Cal. High Court, Poosa Ram, 6 W. R., 11.

The sanction may be obtained by application made either by the party injured, or by the Criminal Court, and at any time previous to the commitment of the parties for trial.—Ootum Narain Singh, 8 W. R, 79; Dwarkanath Ghose, 2 W. R., 31; Radhanath Banerjea, Marshall, 407; Dinobundo Chuckerbutty, 5 W. R., 6 (Miscellaneous cases).

The Magistrate of a District having dismissed a Criminal charge made over the case to a Deputy Magistrate for investigation, who, after a regular trial, convicted the original complainant of having intentionally made a false charge, &c., (S. 211, Penal Code). Held that the order of the Magistrate amounted to a sanction within the terms of S. 169.—Sheo Churn, 28th September 1866, 2 Wyman's Reporter, 59.

Sanction to a prosecution for an offence specified in S 169 does not give a Criminal Court jurisdiction to entertain a charge of one of the offences

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specified in S. 170, for which a fresh sanction must be obtained.—Dwarkanath Ghose, 2 W. R., 31.

It is not necessary that the parties to be prosecuted should be named by the Court directing an enquiry to be made. A case, may under S. 171, be sent for investigation, and the Magistrate can thereupon commit for trial any person against whom he may consider an offence proved, although that person may not have been named in the order of reference.—Essan Chunder Dutt, Marshall 270. The Agra Court has, however, required that the sanction of the Civil Court should be obtained before a Magistrate can proceed against other persons than those against whom a prosecution has been already sanctioned.—Sheo Sahai Sing, 3 Agra, 75.

Sanction to a Criminal prosecution having been refused by a Subordinate Civil Judge, it has been held that a Sessions Judge can, on the application of the parties, grant such sanction.—Radhanath Banerjea, Marshall 407; Denobundo Chuckerbutty, 5 W. R., 6 (Miscellaneous cases). A Collector acting under Act X, of 1859 is a Civil Judge. (See S. 19, Illustration A., Penal Code). He has, therefore, full authority to act under S. 169 and the following Sections of the Code of Criminal Procedure, (Bunsee Singh, 1 W. R., 47); but a Collector cannot sanction the institution of a Criminal prosecution out of proceedings before a Deputy Collector in a case under Act X. of 1859, in which the appeal would not lie to him, but to the Judge, since the Deputy Collector in such a matter would be subordinate not to the Collector but to the Judge.—2 Agra, 373.

The Calcutta High Court by a Full Bench has ruled that, as a Civil or Criminal Court, it cannot entertain an appeal against any sanction to, or order for, a Criminal prosecution under S. 169 or S. 170, nor has it authority to order such proceedings to be stayed.—Ram Proshad Hajaree, 5 W. R., 24 (Miscellaneous cases); but the same Court has also held that it has power to cancel a commitment made by a Judge under S. 173, on the ground that in so doing he had acted without jurisdiction.—Enayet Hossein, 5 W. R., 43.

Proceedings in a case of giving false evidence should not be stayed, because the case in which the false evidence has been given is in appeal, inasmuch as the order of an Appellate Court could not affect the Criminal proceedings.—3 W. R., 21 C. L.

Prosecution for certain offences relating to documents not to be instituted but with the sanction of the Court in which such documents were given in evidence.

170. A charge of an offence relating to documents described in Sections 463, 471, 475, or 476, of the Indian Penal Code, when the document shall have been given in evidence in any proceedings in any Court, Civil or Criminal,* shall not be entertained in any Criminal Court* against a party to such proceedings, except with the sanction of the Court in which the document was given in evidence, or of some other Court to which such Court is subordinate. Such sanction may be given at any time.

* S. 11.

This Section confers on Civil Courts higher powers than those conferred by S. 19, Act XXIII. of 1861, which generally re-enacted the provisions of S. 2 Act I. of 1848.

S. 463, Indian Penal Code, refers to forgery: S. 471, to the fraudulent or dishonest using of a forged document: Ss. 475, 476, to the counterfeiting a decree or mark used for authenticating documents, or possessing counterfeit marked material.

The rulings cited in the Note to S. 169 apply *mutatis mutandis* to cases under S. 170.

The procedure regarding offences relating to documents committed before 1st January 1862, that is before the Code of Criminal Procedure came into

force, is laid down in Act I. of 1848; see also judgment of the Calcutta High Court, in the case of Radhajeebun Moostafee, 5 W. R., 8.

If a Civil Court send a person before a Magistrate to be prosecuted on a charge of forgery, the Magistrate is also competent to commit him on a charge of using as genuine a false document, or of abetting forgery.—Mohesh Chunder Acharjee, 6 W. R., 20. The Agra Sudder Court (Cir. 10, 1865) has declared that, under S. 463, Penal Code, as used in S. 170, Code of Criminal Procedure, are included prosecutions under Ss. 466, 467, 468, 469, which are but particular forms and phases of the general offence of forgery defined in S. 463.

In the case of Baijoo Baut and others (8 W. R., 62), the Calcutta High Court held that there was no reason why a Magistrate should not send for investigation by himself an offence committed before him, since he could do as a Magistrate what the law empowered him to do as a Collector or Deputy Collector; but in the case of Nehal Mahato (9 W. R., 13.), the same Court stated that, as a general rule, it was very objectionable for the same Officer who, under S. 168, entertained a charge of an offence against any Court or public servant to make over such a case for trial by himself as Magistrate.

Mode of proceeding in cases mentioned in the last three preceding Sections.

171. When any Court, Civil or Criminal,* is of opinion that there is sufficient ground for investigating any charge mentioned in the last three preceding Sections, the Court, after making such preliminary enquiry as may be necessary, may send the case for investigation to any Magistrate having power to try or commit for trial the accused person for the offence charged, and such Magistrate shall thereupon proceed according to law, and the Court shall have power to send the accused person in custody, or to take sufficient bail for his appearance before such Magistrate, and may bind over any person to appear and give evidence on such investigation.

* S. 11.

A case once made over to a Criminal Court for investigation of a Criminal charge must be disposed of by the Magistrate, either by the discharge, acquittal, conviction, or commitment of the accused. It cannot be returned to the Civil Court.—Ramsookh, 3 Agra, 21.

A preliminary enquiry held by a Civil Court under S. 171 is not judicial, and should not, therefore, be on oath. The Magistrate on receiving such a case should commence it *de novo*.—Jud. Comr., Punjab, 1610, 1st April, 1862. See also Nujjum Ali, 6 W. R., 41.

It is not necessary that an enquiry under S. 171 should be conducted, in the presence of the accused. All that the Court making it has to do is to satisfy itself that there are *primâ facie* grounds for sending the case for investigation to a Magistrate.—Chotoo Shadoo Peada, 9 W. R., 3.

A commitment made by a Magistrate without a preliminary enquiry under Chapter XII., and merely upon proceedings held by a Civil Court, has been held to be illegal.—Calcutta High Court, Radhanath Mojoomdar, 13th Jan. 1868; see also Nujjum Ali, 6 W. R., 41; and 6 Agra, 115.

The term "charge," as used in S. 171 is something very different from the *formal written instrument of charge* to be drawn up under S. 233, upon which a prisoner is to be tried before a Sessions Court. When a prisoner is sent by a Civil Court before a Magistrate on a charge of forgery, it is perfectly competent to the Magistrate to send him for trial on a charge either of forgery, or of using the document knowing it to be forged, or of abetting forgery. —Mohesh Chunder Acharjee, 6 W. R., 20.

Power of Court of Session in respect of such offences committed before it.

172. It shall be competent to a Court of Session* to charge a person for any such offence committed before it or under its own cognizance, if the offence be triable by the Court of Session* exclusively, and to commit or hold to bail and to try such person upon its own charge. In such case the Court of Session* shall have the same power† of summoning and causing the attendance at the trial of the witnesses for the prosecution or for the defence, which is vested in a Magistrate by this Act. Such Court may direct the Magistrate to cause the attendance of such witnesses on the trial.

* S. 13.

† S. 186, *et seq.*

"Within its own cognizance." Proceedings before a Magistrate on an enquiry preliminary to commitment are within these terms; also an appeal before a Court of Session, or a case taken up under S. 434, Criminal Procedure.—Agra Sudder Court, 28th August 1864.

Civil Courts empowered to complete investigation and commit accused to Court of Session.

173. In any case triable by the Court of Session‡ exclusively, it shall be lawful for any Court of Civil Judicature before which any such offence was committed, instead of sending the case for investigation to a Magistrate, to complete the investigation itself, and to commit or hold to bail the accused person to take his trial before the Court of Session.‡

‡ S. 13.

If the act committed constitutes several offences, some of which are not exclusively triable by the Court of Session, the Civil Court should proceed under S. 171, rather than under S. 173.—Calcutta High Court, Circular 27, 1866.

It is only when a Civil Court exercises the power, with which it is vested under S. 173, *i. e.*, when it completes the investigation, and commits to the Sessions Court, that the evidence taken before it is evidence against an accused.—Nujjum Ali, 6 W. R., 41.

A Civil Court acting under S. 173, cannot issue a warrant for the apprehension of any party not before the Court. This Section and S. 175 apply to cases in which the alleged offender is in Court or within the power of the Civil Court.—Calcutta High Court, 1774, 1863

The procedure prescribed for Magistrates should be followed in cases taken up under S. 173. Processes may be sent directly through the Police or by means of the Magistrate.—Jud. Comr., Punjab, 1863.

The Calcutta High Court has held that, when a Collector is acting under Act X. of 1859, he is a Judge [S. 19, Penal Code], and therefore his Court is in such a matter a Court of Civil Judicature, with power to proceed under S. 173.—Bunsee Singh, 1 W. R., 47. A preliminary enquiry held by a Civil Court under S. 173 should be conducted in the manner prescribed in Chapter XII. of that Code.—Jud. Comr., Punjab, 1610, April 1st, 1862. When a Civil Court elects to proceed under S. 173, instead of S. 171, it is bound to complete the investigation in the way in which it would have been completed if the case had been sent for investigation to a Magistrate.—2 Agra, 349.

Procedure by Civil Court in such cases.

174. When any such commitment is made by order of a Civil Court, the Court shall frame a charge in the manner hereinafter provided, and shall transmit the same with the order of commitment and the record of the case to the Magistrate* of the District or other Officer exercising any† of the powers of a Magistrate, and such Magistrate or other Officer as aforesaid shall bring the case before the Court of Session,‡ together with the witnesses for the prosecution and defence.

* Ss. 14, 18.
† S. 17.
‡ S. 13.

Compare Act XXIII. of 1861, S. 18.

The duties to be performed by a Magistrate under S. 174 being only ministerial, the law has evidently intentionally placed them within the competence of an officer exercising *any* of the powers of a Magistrate.

Court of Session or Civil Court may exercise all the powers of a Magistrate as to binding over persons to give evidence.

175. Whenever any Court of Session§ or Civil Court shall commit or hold to bail any person for trial under the last three preceding Sections, such Court may also bind over any person to give evidence, and for that purpose may exercise‖ all the powers of a Magistrate.

§ S 13.
‖ S. 232.

See Notes to S. 173.

Magistrates not empowered to commit, to send the case to Magistrate competent to do so.

176. If any such offence, triable by the Court of Session¶ exclusively, be committed before a Magistrate not empowered to commit for trial before a Court of Session, such Magistrate shall send the case to a Magistrate competent to make such commitment, who shall proceed to pass such order in the case as he may think proper.

¶ S. 13.

Prosecution for adultery not to be instituted except by the husband.

177. A charge of an offence under Section 497 of the Indian Penal Code shall not be instituted except by the husband of the woman.

S. 497, Penal Code, relates to adultery.

A minor can act under S. 177, Criminal Procedure, with the aid of his nearest friend.—Jud. Comr., Punjab, 1863.

Prosecution for enticing away a married woman not to be instituted except by husband or person in charge of the woman.

178. A charge of an offence under Section 498 of the Indian Penal Code shall not be instituted, except by the husband of the woman, or by the person having care of such woman on behalf of her husband.

S. 498, Penal Code, refers to the enticing or taking away, or detaining with a criminal intent a married woman.

It is immaterial whether the woman is an adult or a minor.—Jud. Comr., Punjab, 3637, August 6th, 1862.

CHAPTER XII.—Ss. 179—232.

Of Preliminary Enquiry by the Magistrate in Cases triable by the Court of Session.

Magistrate may issue his warrant.

179. When a complaint is made before a Magistrate* that any person has committed, or is suspected to have committed, any of the offences specified in Column 7 of the Schedule annexed to this Act, as triable exclusively by the Court of Session, or which in the opinion of such Magistrate ought to be tried by the Court of Session, it shall be lawful for such Magistrate to issue his warrant to apprehend such person. Provided that in any such case the Magistrate to whom such complaint is made may, if he shall think fit, instead of issuing in the first instance his warrant to apprehend the person so complained against, issue his summons requiring him to appear to answer to such complaint.

* S. 15.

May issue a summons instead of a warrant.

When an Act declares that certain offences shall be punished by a Magistrate, but is silent regarding the jurisdiction over other offences, the Bombay High Court has held that they were cognizable only by the Court of Session to which the Magistrate was bound to commit.—Atmaram Waman Bhandakar, 3 Bombay, 8 *Crown Cases;* also Lukshman Balaji, Ibid 10.

Postponement of issue of process.

180. If the Magistrate† see cause to distrust the truth of the complaint, he may postpone the issuing of process for causing the attendance of the person complained against, and direct a previous enquiry to be made into the truth of the complaint, either by means of any Officer subordinate to such Magistrate, or of a local Police Officer, or in such other mode as he shall judge most proper, for the purpose of ascertaining the truth or falsehood of the complaint.

† S. 15.

May dismiss the complaint.

If such enquiry is made by means of some person other than an Officer exercising any of the powers‡ of a Magistrate or a Police Officer, such person shall exercise all the powers vested by this Act in an Officer in charge of a Police Station, except that he shall have no power to make an arrest. Nothing contained in this Section shall prevent the Magistrate from at once dismissing the complaint, if in his judgment there be no sufficient ground for proceding with it.

‡ S. 17.

See Chapter XVI. for the procedure to be followed in cases referred to Subordinate Magistrates.

The Calcutta High Court has held that S. 180 does not apply to trials of persons charged with offences falling under Chapter XIV. of this Code, Hurreck Chand Nowla, 8 W., R. 12; but S. 133 declares that "it shall be "competent to a Magistrate, upon the report of a Police Officer, or other- "wise, to direct enquiry to be made by a Police Officer into *any* offence "punishable under the Indian Penal Code, or under any special or local "law."

The record of Police proceedings should not be filed with the record of the Criminal case, as they are not legal evidence. The proper course is to summon the Police Officer to produce the daily record of his proceedings kept under S. 154, and, on his appearance, to examine him as to the matter which it is required to elicit, giving him an opportunity, after the record has been proved to be what it is represented to be, and if it be necessary, to refresh his memory by looking at it, and to tell the Court what it contains. The Police report will be then legal evidence, and the object of the Court will be attained.—4 W. R., 8 C. L.

Magistrate may direct bail to be taken.

181. It shall be in the discretion of the Magistrate,* in issuing his warrant for the arrest of any person against whom a complaint has been made, to direct by endorsement on the warrant that, if such person be willing and ready to give bail in a sum to be fixed by the Magistrate for his appearance before the Magistrate to be named in the warrant on a specified day to answer the complaint, the Officer to whom the warrant is directed shall accept such bail, and shall release the person from custody. In the event of bail being given, the Officer shall forward the bail-bond to the Magistrate.

* S. 15.

For form of warrant, see Appendix B to this Code.

Magistrate may dispense with the personal attendance of the accused.

182. The Magistrate may, if he see sufficient cause, dispense with the personal attendance of the accused person, and permit him to appear by an agent duly authorized to act in his behalf. But it shall be in the discretion of the Magistrate, at any stage of the proceedings, to direct the personal attendance of the accused person.

The Calcutta High Court, in the case of Hurronath Rai (2 W. R., 50), held that there was nothing illegal in the commitment of a person who had appeared before the Magistrate only by agent.

There is no appeal against the order of a Magistrate refusing to dispense with the personal attendance of an accused person.—Calcutta High Court, 567, 1862.

The personal attendance of an accused person before a Court of Session cannot be dispensed with.—Calcutta High Court, Nistarinee Dassee, 3 Wyman's Reporter, p. 37.

S. 432 declares that "every person charged before any Criminal "Court with an offence may of right be defended by Counsel or authorized "Agent." This has, however, been qualified by Act XX. of 1865, S. 40, which requires "the permission of the presiding Judge or Magistrate," if the authorized Agent be not a Pleader or Mookhtar duly qualified under

CH. XII. Ss. 183 & 184.

that Act; and it further declares that "no person so appearing, pleading, acting, or assisting, shall be entitled to recover any fee or reward therefor."

Proclamation for an absconding party.

183. If any person accused of an offence absconds or conceals himself, so that upon a warrant issued against him he cannot be found, the Magistrate shall, if satisfied that such person absconds or conceals himself for the purpose of avoiding the service of the warrant, issue a written* proclamation, requiring such person to appear to answer the complaint within a fixed period, not less than thirty days. The proclamation shall be publicly read in some conspicuous place of the town or village in which such person usually resides, and shall be affixed on some conspicuous part of the ordinary place of abode of such person, or on some conspicuous place of such town or village. A copy of the proclamation shall also be affixed on some conspicuous part of the Court-house of the Magistrate.

* S. 10.

Before issuing a proclamation or order of attachment of property, a Magistrate is bound to satisfy himself, by examination of the officer to whom the warrant is directed, or in some other manner, that the accused is evading justice (Bishonath Sircar, 3 W. R., 63), and he should record in his proceedings whether or not he was so satisfied. It is not sufficient that a Magistrate should record that the Police Officer *could not find* a certain person.—Sheodyal Singh, 6 W. R., 73.

If an accused person against whom a warrant and proclamation have been issued, appears within the term specified in the proclamation, he is not liable to punishment under S. 172, Penal Code; but if he neglects to attend on the proclamation, he is liable to punishment under S. 174.—Omesh Chunder Bose, 5 W. R., 71.

A proclamation cannot be issued for the appearance of a person accused of an offence for which the punishment does not exceed six months' imprisonment, the trial of which is regulated by Chapter XV.—Muddun Mohun Poddar, 3 W. R., 35.

Attachment of the property of absconding party.

184. The Magistrate may, at the same time, order the attachment of any moveable† or immoveable property belonging to the person absconding or concealing himself. Such order shall not authorize the attachment of any property out of the jurisdiction of the Magistrate by whom it is made, but it shall authorize the attachment of property in the jurisdiction of any Magistrate by whom such order is endorsed. The attachment under this Section shall, if the property ordered to be attached be land paying revenue to Government, be made through the Collector of the District in which the land is situate, and in all other cases by seizure under the order of the Magistrate, or by the appointment of a manager and receiver, or by an order prohibiting the payment of

† S. 6.

rent to the absent person, as the Magistrate shall deem proper. If the absent person shall not appear within the time specified in the proclamation, the property under attachment shall be declared to be at the disposal of Government, but shall not be sold until the expiration of six calendar months, unless such property is of a perishable nature, or it shall be considered by the Magistrate that the sale would be for the benefit of the owner.

It would appear that a Magistrate who originally issued the warrant can order the attachment of only such property of the party absconding or concealing himself as is found within his jurisdiction. There is, however, apparently no prohibition against the attachment of property in another jurisdiction, provided that the consent of the Magistrate of that jurisdiction has been obtained. The proper course would probably be to send the order of attachment to that Magistrate, with a requisition for his endorsement thereon to give it due authority in that foreign jurisdiction.

Before proceeding to declare property under attachment to be at the disposal of Government, the Magistrate should take evidence that the formalities for the issue of a proclamation have been duly observed.—Muddun Mohun Poddar, 3 W. R., 35.

The party, if present, should be called upon to show cause against the confiscation of his property. The Magistrate's proceedings were annulled as illegal, because he omitted to comply with this form.—Jhundoo Singh, 5 W. R., 8.

The following rule has been issued to Collectors by the Revenue Board of Bengal:—

"Property thus under attachment is to be declared at the disposal of Government, if the absent person does not appear within the time (limited to 30 days) specified in the proclamation issued under S. 183 at the same time as the attachment. But such property is not to be sold until the expiration of six calendar months. It is incumbent on the Collector to take care that the right of Government to such land is declared on the expiration of the period mentioned in the proclamation, and to obtain an order from the Magistrate for the sale of the property at the expiration of the six months herein referred to."

"The law does not restrict the Collector to any particular mode of management during the period that such lands are under attachment and before sale: ordinarily, however, the provisions of Reg. V. of 1827 should be applied."—Miscellaneous Rules, p. 5.

Restoration of property declared to be forfeited.

185. When any person whose property shall have been declared to be at the disposal of Government under the last preceding Section shall, within two years after the attachment of the property, surrender himself, and shall, upon trial before a competent Court, prove to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of evading justice, such property, or, if the same shall have been sold, the proceeds thereof, shall be restored to him.

An arrest does not amount to a surrender.—Agra Sudder Court, June 26th, 1863.

The Magistrate should be most careful not to interfere with, or disturb the possession of, third persons; he has no authority to order the attachment of any property unless it belongs to the party absconding. The claimants are not barred by the sale, and may bring a suit in the Civil Court against the purchasers to establish their rights. When claimants have held back for six months, a Magistrate possibly may be justified in presuming that the property was not theirs, leaving them to vindicate any right that they may have in the Civil Court. He may fairly say that he is not bound to try a question which is more properly one for the Civil Court.—Chamroo Roy, 7 W. R., 35.

If the proceedings have been regularly conducted, a suit on the part of the absconding party will not lie.—Bukhonee Singh, 8 W. R., 207, *Civil Cases.*

On his surrender he must be asked whether he absconded or concealed himself. Where the Magistrate failed to do this, the proceedings and sale were quashed as irregular.—Sheodyal Singh, 6 W. R., 79. It is for the accused person to show that he has not been evading justice. As he did not attempt to do so, the Magistrate was competent to declare his property to be at the disposal of Government, notwithstanding that though mistake or inadvertence, such an order had not been passed, before his appearance, within the six months specified in S. 184.—Bissonath Sircar, 3 W. R., 63.

"*Upon trial before a competent Court.*" This implies that the evidence to prove that the accused was absconding, as well as his evidence in exculpation, shall be heard in his presence, and a judicial determination come to on the points.—Bissonath Sircar, 3 W. R., 63.

The Agra Sudder Court has further held that these terms refer to the Court trying the person for the offence on account of which the warrant was issued.— 6 Agra, 106. The prisoner is entitled to a distinct finding on his evidence to an *alibi*, and that he did not abscond to evade justice.—Muddoo Sarun Singh, 8 W. R., 18.

Because the case in which the accused persons have absconded has been struck off, owing to there being little prospect of bringing them to trial, does not dispose of the matter of the absconding for which proceedings under S. 184 may be taken.—Muddoo Sarun, 7 W. R., 40.

Summons to a witness to attend and give evidence.

186. The Magistrate shall ascertain from the complainant, or otherwise, the names of any persons who may be acquainted with the facts and circumstances of the case, and who are likely to give evidence for the prosecution, and shall issue his summons to such persons, requiring them to appear at a time and place mentioned in the summons before such Magistrate to testify what they know concerning the complaint made against the accused person.

* S. 15.

Form of summons to the witness, and mode of service thereof.

187. Every summons issued by a Magistrate* under the last preceding Section, shall be served personally on the witness; or, if the witness be not found, may be left for him with some adult male member of his family residing with him.

A similar mode of service is prescribed by S. 71 in the case of an accused person. By S. 72, provision is made for a case in which there may be no adult male member of the family of the accused person on whom service can be made There is no such provision specially made in this Chapter, and it is doubtful whether S. 72 would apply, as S. 75 declares that "the provisions relating to a summons and its *issue* contained in this Chapter" [*i. e.*, Chapter IV., in which S. 72 stands], shall be applicable

"to every summons issued under this Act," but does not refer specially to the rules regarding the *service*.

See note to S 71 as to the mode in which summons should be served on Subordinate Police Officers, Railway Officials or employees, and Subordinate Medical Officers.

In what cases warrant in the first instance.

188. If the Magistrate shall see reason to believe that such witness will not attend to give evidence without being compelled to do so, it shall be lawful for such Magistrate, instead of issuing a summons, to issue his warrant in the first instance.

Witnesses arrested under a warrant and brought before a Magistrate should not be treated as criminals, and put in irons; they should be simply treated as persons arrested on Civil process.—Calcutta High Court, Cir. 21, 1864.

If warrant cannot be served.

189. If the warrant cannot be served, and the Magistrate is satisfied that the witness absconds or conceals himself for the purpose of avoiding the service thereof, the Magistrate may issue a proclamation, requiring the attendance of such witness to give evidence at a time and place to be named therein, to be affixed on some conspicuous part of his ordinary place of abode; and if such witness shall not attend at the time and place named in such proclamation, the Magistrate may order the attachment of any moveable property* belonging to such witness to such amount as he shall deem reasonable, not being in excess of the amount of costs of attachment and of any fine to which such witness may be liable under the provisions of the following Section. Such order shall not authorize the attachment of any property out of the jurisdiction of the Magistrate by whom it is made, but it shall authorize the attachment of property in the jurisdiction of any Magistrate by whom such order is endorsed.

* S 6.

If on attachment witness appear and satisfy Magistrate, his property to be released from attachment.

190. If the witness shall appear and satisfy the Magistrate that he did not abscond or conceal himself for the purpose of avoiding the service of the warrant, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Magistrate shall direct that the property be released from attachment, and shall make such order in regard to the costs of the attachment as he shall deem fit. If such witness

If he do not appear or satisfy Magistrate, property to be sold.

CH. XII. S. 191.

shall not appear, or appearing, shall fail to satisfy the Magistrate that he did abscond or conceal himself for the purpose of avoiding the service of the warrant, and that he had not such notice of the proclamation as aforesaid, it shall be lawful for the Magistrate to order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of any fine which the Magistrate may impose upon such witness under the provisions of Section 172 of the Indian Penal Code. If the witness shall pay to the Magistrate the costs and fine as aforesaid, the Magistrate shall order the property to be released from attachment.

The difference between the penalties to which an accused person and a witness are respectively liable on their absconding or concealing themselves is marked. In the former case, the term to be specified in the proclamation is not to be less than 30 days: in the latter, it is left to the discretion of the Magistrate. In the former, attachment of *moveable and immoveable* property may be ordered simultaneously with the proclamation: in the latter, non-compliance with the proclamation must have occurred before the Magistrate can order the attachment of the *moveable* property. In the one case, the entire property may be attached: in the other, the attachment is confined not only to the moveable property, but the amount must be "reasonable," and must not exceed the amount of costs of attachment, and of any fine to which the witness may be liable under S. 172, Penal Code, *i. e*, 1,000 Rupees. The sale of the attached property in the case of an accused person cannot *ordinarily* take place until the expiration of six calendar months; but in the case of a witness it can take place as soon as, on his appearance, he has failed to explain satisfactorily the cause of his absence, or, on his non-appearance, on the date fixed for the determination of the matter.

A Magistrate fined a witness who failed to appear after proclamation and attachment of his property. The Sessions Judge, on appeal, reversed the order, on the ground that the appellant's answer to the charge should have been recorded, and that, not being so recorded, the fine was illegal. The Calcutta High Court declared that the Judge had taken a mistaken view of the law, for taking a witness' answer supposes that the man has made his appearance, whereas, as in the present case, if he did not come in, and his defence could not be recorded, he would escape punishment.—Rhedoy Nath Biswas, 2 W. R., 45.

If he do not obey summons, then warrant.

191. If any person summoned to give evidence shall neglect or refuse to appear at the time and place appointed by the summons, and no just excuse shall be offered for such neglect or refusal, it shall be lawful for the Magistrate,* upon proof of the summons having been duly served, to issue a warrant under his hand and seal, to bring such person before him to testify as aforesaid.

*S. 15.

A Magistrate is not bound to issue a warrant against a witness unless there is proof that the summons has been duly served.—Abdool Ruhman, 7 W. R., 37.

Witnesses arrested under warrant and brought before a Magistrate, should not be treated as criminals, and put into irons: they should be treated simply as persons arrested on Civil process.—Calcutta High Court, Cir. 21, 1864.

192. If any person summoned or brought before a Magistrate, shall refuse to answer such questions as shall be put to him, without offering any just excuse for such refusal, the Magistrate may, by warrant, under his hand and seal, commit the person refusing to custody for any term not exceeding seven days, unless he shall, in the meantime, consent to be examined and to answer, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of Section 163 of this Act.

Refusing to answer, may be committed to custody.

By S. 32, Act II. of 1855, it is enacted that "a witness shall not be excused from answering any question relevant to the matter at issue in any suit or in any Civil or Criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate such witness, or that it will expose, or tend, directly or indirectly, to expose such witness to a penalty or forfeiture of any kind. Provided that no answer, which a witness shall be compelled to give, shall, except for the purpose of punishing such person for wilfully giving false evidence upon such examination, subject him to any arrest or prosecution, or be used as evidence against such witness in any Criminal proceeding."

The offence committed by a witness in refusing to answer a question is punishable under S. 179, Penal Code, and the procedure to be followed is laid down in S. 163, Code of Criminal Procedure.

193. The Magistrate shall take the evidence of the complainant, and of such persons as are stated to have any knowledge of the facts which form the subject-matter of the accusation and the attendant circumstances.

Examination of the complainant and witnesses for the prosecution.

194. The complainant and the witnesses for the prosecution shall be examined in the presence of the accused person, or of his Agent* when his personal attendance is dispensed with and he appears by Agent. The accused or his Agent shall be permitted to cross-examine the complainant and his witnesses.

To be in the presence of the accused who may cross-examine.

* S. 182.

S. 432 declares that "every person charged before any Criminal Court with an offence may of right be defended by Counsel or authorized agent." This has, however, been qualified by Act XX. of 1865, S. 40, which requires "the permission of the presiding Judge or Magistrate," if the authorized agent be not a Pleader or Mooktar duly qualified under that Act; and it further declares that "no person so appearing, pleading, acting, or assisting, shall be entitled to recover any fee or reward therefor."

The following orders have been issued by the Calcutta High Court:—

The evidence of witnesses should be recorded as soon as possible after their attendance. If, from unavoidable causes, an adjournment is indispensable, there should be no unnecessary delay. Witnesses remaining over from one day should, as a rule, be examined at the first sitting of the Court on the

CH. XII. S. 194.

following day. By this means, the public will be put to no inconvenience, and justice will be administered in a prompt and satisfactory manner. Chief Magistrates of Districts are held responsible for the correction of any irregularities on the part of their Subordinates in the discharge of witnesses.

Under S. 43 complainants and witnesses must be examined upon oath or solemn affirmation, or otherwise, according to the provisions of the law for the time being in force in relation to the examination of witnesses. The following form of solemn affirmation is prescribed by Act V. of 1840 for Hindoos and Mahomedans:—"I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth." If a witness be not a Hindoo or Mahomedan, he should be sworn.—Ramtapal Singh, 5 W. R., 65. If, however, by reason of immature age, or want of religious belief, or by reason of defect of religious belief, in the opinion of the Court or person by whom his attendance is required, any person ought not to be admitted to give evidence on oath or solemn affirmation, he shall be admitted to give evidence on simple affirmation, declaring that he will speak the truth, the whole truth, and nothing but the truth.—Act II., 1855, S. 15. S. 14 of the same Act declares that children under seven years of age, and persons of unsound mind, who appear to be incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly, shall be incapable to testify.

Under S. 57 of the same Act the improper admission of evidence is no ground itself for a new trial, or a reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision.—See case of Nujjum Ali, 6 W. R., 41. A conviction founded upon the uncorroborated evidence of one or more accomplices alone is valid in law (Elahee Buksh, 5 W. R., 80); but in cases of treason and perjury the evidence of one witness uncorroborated is not sufficient for proof of any fact.—Act II., 1855, S. 28: Lalchand and Kowra, 5 W. R., 23: Mohima Chunder Chuckerbutty, Ibid 77. Comparison of the signatures of the prisoner is a sufficient corroboration.—Bakhowry Choubay, 5 W. R., 98.

The examination of complainants and witnesses should contain the name of the person examined, and of his or her father, and if she be a married woman, that of her husband, the religion, caste, profession, and age of the deponent, and the village and pergunnah in which he or she resides.—Calcutta High Court, Cir. 19, 1864.

The examination of witnesses should invariably be conducted in the presence of the accused person. The evidence of witnesses in another trial is not evidence against a person charged with the same offence who has been subsequently apprehended.—Calcutta High Court, Kasee Roy, January 27th, 1863.

To read the deposition of a witness on some former trial to the witness is not an examination of the witness in the presence of the accused as to his knowledge of the facts, which form the subject-matter of the accusation: a trial where evidence is thus taken is no legal trial. In every trial, no matter how often the case has been before the Court, the witnesses must be examined *de novo* in the same manner as if the case were entirely new, and the witnesses had not been examined before.—Sheikh Kyamut, Suth.'s Rep., 1864, p. 1.; Affazooddeen, Ibid, p. 13. It is not sufficient to read over his previous examination to a witness, calling upon the witness to identify the prisoner, and allowing the latter to cross-examine them.—Kanye Sheikh, Ibid, p. 38.

There is one exception to this rule. S. 371 declares that the declaration "of a deceased person, *whether it be made in the presence of the accused person or not*, may be given in evidence, if the deceased person at the time of making such declaration believed himself to be in danger of approaching death, although he entertained, at the time of making it, hopes of recovery." Under S. 370, the report of the Chemical Examiner to Government is evidence upon any matter or thing submitted to him for examination or analysis and report.

The Madras Sudder Court has held that, though depositions need not be signed by the deponents, it is expedient that their signatures should be taken to the vernacular record.

Mode and language in which the evidence is to be recorded.

195. The evidence of each witness shall be taken down in writing in the language in ordinary use in the District* in which the Court is held, by or in the presence and hearing and under the personal direction and superintendence of the Magistrate, and shall be signed by the Magistrate. When the evidence of a witness is given in English, the Magistrate may take it down in that language with his own hand, and an authenticated translation of the same in the language in ordinary use in the District* in which the Court is held, shall form part of the record. In cases in which the evidence is not taken down in writing by the Magistrate, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Magistrate with his own hand, and shall be annexed to the record. If the Magistrate shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so.

* S. 18.

A Sessions Judge [and Magistrate] is bound to take a memorandum of the deposition of each witness as the examination proceeds: this is not complied with by a mere statement that a witness deposes the same as the last.—Byha Wullud Soorjim, 1 Bombay, 91; Muttee Nushyo, Suth.'s Rep., 1864, p. 18; Agra Sudder Court, Cir. 18, 1865.

The practice of preparing the memoranda of evidence, required by S. 195, from the recorded deposition of witnesses after their examination, is contrary to law.—Agra Sudder Court, Cir. 13, 1865.

The term "witness" in S. 195 includes a complainant.—Calcutta High Court, 156, 1865.

The question whether a purdah lady, who claims to be allowed to remain in her palanquin, should be permitted to do so, was raised and decided by the Calcutta High Court in the affirmative, in the case of Beebee Rookhyah Banoo, Feb. 17, 1868. The Court relied on the note of a case in page 9 of the 2nd Vol. of Smoult and Ryan's Rules and Orders of the late Supreme Court, from which it appeared that a woman of rank was brought into Court in a covered *tonjon*, and arraigned on charges of manslaughter and murder, without shewing her face, her identity having first been ascertained by the oath of a credible witness.

Local Government may direct the evidence to be recorded in the vernacular language of the Magistrate.

196. It shall be competent to the Local Government to direct that, in any District,† or part of a District to which this Act shall extend, or shall hereafter be extended under the provisions of Section 445 of this Act, the evidence of witnesses shall be taken down by the Magistrate with his own hand in the vernacular

† S. 18.

CH. XII. S. 197.

language of the Magistrate, unless the Magistrate be prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court. The evidence so taken down shall be signed by the Magistrate, and form part of the record. Provided that, if the vernacular language of the Magistrate be not English or the language in ordinary use in the District* in which the Court is held, the Magistrate may be directed by the Local Government to take down the evidence in the English language, or in the language in ordinary use in the District* in which the Court is held, instead of his own vernacular.

Proviso.

* S. 18.

On 30th June 1864, the Government of Bengal issued an order under S. 196 for the recording of evidence in all cases in Magistrate's Courts; and on August 6th, 1865, the same practice was introduced into all Courts of Session.

In the Presidency of Madras these provisions have not been so generally extended. They have been extended to all classes of Magistrates in the Districts of Nellore, Cuddalore, and Cuddapah, and apparently only in special cases of particular and qualified officers in other Districts. This mode of trial has also been introduced in the Sessions Courts of Chingleput and Chittore.

In the Presidency of Bombay and in the North-Western Provinces, the Local Government do not appear to have exercised the powers conferred on them by S. 196.*

The term "witnesses," in S. 196, includes complainants.—Calcutta High Court, 156, 1865.

The examination of an accused should invariably be recorded in the language it is delivered.—3 W. R., 14 C. L.

In depositions in which there may be any doubt as to the exact meaning of any expression used, and in which the doubtful expression has an important bearing on the offence of which a prisoner is charged, the Calcutta High Court [Cir. 9, 1865] suggested the expediency of transcribing, in Roman characters, the words actually used, in order that the Court may be in a position, on the matter coming before it, without fear of error, to determine on their exact signification, and in consequence to give them their due and proper weight. Should an instance occur in which a foreign language is used, or in which the evidence may be delivered in a dialect to which the Judge may be unaccustomed, an Interpreter should be employed in the manner prescribed by S. 431, Code of Criminal Procedure.

197. If any question shall arise as to what is the language in ordinary use in any District† in which a Court is held, that question shall, for the purposes of this Act, be determined by the Local Government.

Local Government to decide what is the language in ordinary use in any District.

† S. 18.

* *Note.*—This information was, it is believed, correct at the commencement of 1866. There may be recent orders on this subject which, it is to be regretted, have not been ascertained in time for the publication of this Edition.

198. The evidence shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative. It shall be in the discretion of the Magistrate to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for so doing, or any person who is a prosecutor, or a person accused, or his Counsel or Agent,* shall require it. When the evidence is completed, it shall be read over to the witness in the presence of the accused person if in attendance, or of his Agent* when his personal attendance is dispensed with, and he appears by Agent,* and shall, if necessary, be corrected. If the witness shall deny the correctness of any part of the evidence when the same is read over to him, the Magistrate may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he may think necessary. If the evidence be taken down in a different language from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his evidence as taken down to be interpreted to him in the language in which it was given, or in a language which he understands.

How the evidence is to be recorded.

* 182.

See note to Ss. 194, 195.

199. A memorandum to be signed by the Magistrate shall be attached to the evidence of each witness, and shall state that the evidence was read over to the witness, in a language which he understood (naming the language), and if the fact is so, that the witness acknowledge such evidence to be correct. When the evidence is not taken down by the Magistrate with his own hand, the memorandum shall further state that the evidence was taken down in the presence and hearing of the Magistrate, and under his personal direction and superintendence.

Memorandum to be attached to the evidence.

The provisions of S. 199 apply, no doubt, to all witnesses, whether for the prosecution or defence.—Madras High Court, 1864.

200. If the evidence is given in a language not understood by the accused person, it shall be interpreted to him in open Court in a language understood by him, in all cases where the accused is present in person. If the accused person appears by Agent,* and the evidence is

In what cases evidence to be interpreted to the accused or his Agent.

* S. 182.

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given in a language other than the language in ordinary use in the District* in which the Court is held, it shall be interpreted to such Agent† in that language.

* S. 18.
† S. 182.

S. 431 declares that, "when the services of an Interpreter are required by any Criminal Court for the interpretation of any evidence or statement, such Interpreter shall be sworn, in the manner provided for witnesses by any law for the time being in force, to interpret truly such evidence or statement, and such Interpreter shall be bound to state the truth in his interpretation of such evidence or statement."

S. 195 enacts that, "when the evidence of a witness is given in English, the Magistrate may take it down in that language with his own hand, and an authenticated translation of the same in the language in ordinary use in the District in which the Court is held shall form part of the record."

Power of Magistrate at any stage to summon and examine any person.

201. It shall be in the discretion of the Magistrate, at any stage of the proceedings, to summon and examine any person whose evidence he may consider essential to the enquiry.

Examination of defendant.

202. It shall be in the discretion of the Magistrate, from time to time, at any stage of the enquiry, to examine the accused person, and to put such questions to him as he may consider necessary. It shall be in the option of the accused person to answer such questions.

The Calcutta High Court, in its original Criminal jurisdiction (Phear, J.), in the trial of a European British subject, refused to admit as evidence his answers to interrogations put to him by a Magistrate and Justice of the Peace in the Mofussil during the enquiry preliminary to commitment, on the ground that it did not appear that he had been duly warned before examination.—Sessions for April, 1865.

This has, however, been very recently over-ruled in the Calcutta High Court on its original Criminal juridiction sitting in Banco by Peacock, *C. J.*, Norman and Markby, *J. J.* The judgment of the Chief Justice, which was delivered while the volume was in the Press, is given in Appendix B, page 368.

For the rule regarding the examination of a European British subject, see note to S. 201.

The following are the terms of a Circular, 13, 1864, issued by the Calcutta High Court to the Magistrates subordinate to it :—

"Although the Code of Criminal Procedure does not make it *imperative* on a Magistrate to examine an accused person at any stage of the enquiry, before committing him to stand his trial at the Court of Session, the Court think it necessary to impress upon all Magistrates the expediency of the general adoption of this course at some stage or other of the enquiry. In those few and exceptional cases in which the guilt of an accused may be beyond reasonable doubt, the practice in force may be permitted without risk; but, inasmuch as by S. 225 it is discretionary with a Magistrate to commit, or to discharge an accused person, according as he finds that the evidence is, in his opinion, sufficient for his conviction by the Court of Session or otherwise, it is obvious that the truth of any ordinary case will be best elicited, and obscure points will be cleared away, by any explanation that an accused may wish to give when, after hearing all the evidence against him, or at any other time in the discretion of the Magistrate, he may be subjected to an examination before the Magistrate on points requiring elucidation, it being clearly explained to the accused that it is at his option to answer such questions or not. The Court, however, desire to explain that, in issuing these directions, they in no way sanction any proceedings of an inquisitorial nature."

So also the Madras High Court, in the case of Viraburdra Gaud (1 Madras, 199), remarked that the discretion given by law for questioning a prisoner has not been allowed for the purpose of driving him to make statements criminatory of himself. It can only be properly used for ascertaining from a prisoner how he may be able to meet facts in evidence appearing against him, so that these facts should not stand against him unexplained.

Under no circumstance should a party accused of an offence, being at the time of unsound mind, and incapable of making his defence, be examined by a Magistrate.—Calcutta High Court, Cir. 14, 1864.

The same Court [Cir. 19, 1864] has ordered that the examination of an accused shall contain his or her name, that of his or her father, and if a married woman, that of her husband, the religion, caste, profession, and age of the accused person, and the village or pergunnah in which he or she resides.

The examination should not be recorded until a complaint has been made. A Criminal trial cannot properly be commenced by such examination [*Id.* 627, 1863], but, an admission of crime, fairly made, and after due warning, is not inadmissible, because at the time it was made, no formal accusation had been made against the party making it.—Ramchurn Chamar and others, 4 W. R., 10. The Judicial Commissioner, Punjab, has ruled that an accused person making false, irrelevant, and defamatory assertions in his defence, may be prosecuted in the Criminal, or sued in the Civil Court on account of the same.

There is no provision of law making admissible as evidence against an accused person a statement previously made by him when examined as a witness under a promise of pardon. To admit such a statement would be contrary to the policy of the rule laid down in S. 203, which directs that no influence by means of *promise* or threat, or otherwise, is to be used to induce any person to disclose any matter within his knowledge. The Sessions Judge was, therefore, held by the Calcutta High Court to have been wrong in taking this statement into his consideration; and the Court added that if this had been the only evidence against the prisoner, it would have been necessary to set aside the conviction.—8 W. R, 14 C. L.; Radhanath Dosadh, 8 W. R., 53. This case, it should be noted, was tried by the Sessions Judge with the aid of Assessors.

No influence to be used to induce disclosures.

Magistrate how to proceed in case of confession.

203. No influence, by means of any promise or threat, or otherwise, shall be used to the accused person to induce him to disclose or withhold any matter within his knowledge; but if the accused person shall, of his own accord, propose to confess the commission by him of the offence of which he is accused, the Magistrate shall require him to give an account of the facts and circumstances in detail, and shall examine him thereupon in the same manner as if he were a witness.

A person cannot be convicted on his partial confession. If the statement of a prisoner is relied upon, it must be taken as a whole; part of it cannot be rejected.—Chokoo Khan, 5 W. R., 70; Greedhary Manjee, 7 W. R., 39; Krishto Mundul, 7 W. R., 8.

A very important judgment of Sir B. Peacock, *C. J.*, delivered while this was in the press, declaring the law on the subject of confessions made to the Police and to a Magistrate without warning, is given in Appendix B, page 381.

Accused person not to be sworn.

204. No oath or affirmation shall be administered to the accused person.

Examination of the accused how to be recorded.

205 The examination of the accused person, including every question put to him, and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers; and when the whole is made conformable to what he declares is truth, the examination shall be attested by the signature of the Magistrate, who shall certify under his own hand that it was taken in his presence and in his hearing, and contains accurately the whole of the statement made by the accused person.

The examination of an accused person should be recorded in the language in which it is delivered, notwithstanding that the Local Government may, under S. 196, have ordered that the evidence shall be recorded in English. —Gonesh Koormee, 4 W. R., 1; also 3 W. R., 14 C. L. It shall also contain the name of the person examined, that of his or her father, and, if a married woman, that of her husband, the religion, caste, profession, and age of the person examined, and the village or pergunnah in which he or she resides. —Calcutta High Court, Cir. 19, 1864.

In order to render the examination of an accused person admissible as evidence against him, it is absolutely necessary that it should have been recorded strictly in accordance with law. Where this had not been done, the Calcutta High Court refused to admit it. The Court observed that this was not a technical objection. It is obviously necessary that, before a man can be criminated upon his own statement under examination, the Court should be satisfied that such statement has been deliberately made and recorded; that, after being recorded, it has been shown or read to the accused, so that he might be assured that his words have been correctly taken down, and it is proper that these important circumstances should be attested by the signature of the Magistrate following the certificate mentioned in S. 205, which is to be given under his own hand.—Mussamut Niruni, 7 W. R., 49.

The Bombay High Court has also required a strict observance of this rule, and has held that unless the examination has been recorded strictly in accordance with S. 205, it is not, under S. 366, admissible as evidence before the Court of Session without further proof: but the High Court may remand a case to have recorded the evidence of the writer of the examination, or other person who was present, to show whether the statement was given freely, and was not elicited by threats or promises. Much stress was laid on the absence of any full record of the questions put, but it was held that the form of the question was immaterial, even though it assumed the prisoner's guilt.—Timmi, 2 Bombay, 131; Kalla Lakhmaji, *Ibid*, 419, *et seq.*

The certificate need not be written by the Magistrate himself. It is to be under his hand, that is, signed by him. The signature of the prisoner need not be affixed.—Reza Hossein, 8 W. R., 55.

Any person attending may be detained for any offence committed by him.

206. Any person attending the Court of the Magistrate, although not upon an arrest or summons on a charge made, may be detained by the Magistrate for the purpose of examination for any offence which from the evidence he may appear to have committed, and may be proceeded against as though he had been arrested or summoned on a charge made.

By S. 81 "a Magistrate may at any time direct the arrest in his presence of any person for whose arrest he is competent to issue a warrant."

Discretionary with the Magistrate to call for evidence for the defence.

207. It shall be at the discretion of the Magistrate to summon any witness who may be offered in behalf of the accused person to answer or disprove the evidence against him.

Note in connection with this Section, Circular 13, 1864, issued by the Calcutta High Court, and quoted in the note to S. 202.

Although under S. 207 it is discretional with the Magistrate to summon any witness who may be offered on behalf of an accused person in a case enquired into under Chapter XII., it is obligatory on him to summon, to give evidence before the Court of Session the witnesses for the defence named in the list given in by the accused under S. 227, unless under S. 228 he may think that the name of any witness is unnecessarily included, in which case he should act as therein prescribed.—Agra Sudder Court, Cir. 25, 1865.

Witnesses for the defence.

208. The provisions of Sections 187, 188, 189, 190, 191, and 192, of this Act, shall be applicable to witnesses named in support of the defence.

Magistrate may tender a pardon in certain cases.

209. It shall be lawful for the Magistrate* of the District, or other Officer exercising the powers of a Magistrate,† recording his reason for so doing, to tender a pardon to any one or more of the persons supposed to have been directly or indirectly concerned in or privy to any offence specified in Column 7 of the Schedule annexed to this Act, as triable by the Court of Session,‡ on condition of his or their making a full, true, and fair disclosure of the whole of the circumstances within his or their knowledge, relative to the crime committed, and every other person concerned in the perpetration thereof. If any person shall accept a tender of pardon under this Section, he shall be examined as a witness in the case under the rules applicable to the examination of witnesses. Such person, if not on bail, may, if the Magistrate or other Officer as aforesaid shall think proper, be detained in custody pending the termination of the trial.

* Ss. 14, 18.

† S. 16.

‡ S. 13.

The law requires that a Magistrate should record his reasons for tendering a conditional pardon.—3 W. R., 17 C. L.

This would prevent a Magistrate from authorzing a Police Officer to offer pardon to any offender who would confess and give up the names of his accomplices, since the pardon must be directly tendered by the Magistrate. —6 W. R., 5 C. L.

The fact that the party to whom the Magistrate may have offered conditional pardon is directly or indirectly concerned in the offence does not preclude him from being admitted as a witness for the Crown.— Chundee Churn Banerjea, 6 W. R., 94.

A conditional pardon can only be tendered in cases triable by a Court of Session. If the case be regarding an offence triable by a Magistrate or the Court of Session, the *intention* of the Magistrate to commit it to the Court of Session is the test for determining whether a conditional pardon can be granted or not. A Magistrate cannot tender a pardon in any case which he

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intends to dispose of himself. [Calcutta High Court, 323, May 5th, 1862; also 2 W. R., 8. C. L.] A Sub-Magistrate, empowered under S. 38 to make commitments, can offer a conditional pardon.—[*Id.* 785, 1863].

It is not illegal to take the evidence of a person who has been suspected, but discharged by the Magistrate under S. 225 for want of evidence. He may, notwithstanding, be admitted as a witness for the prosecution. It is not indispensable that he should have been acquitted or pardoned. He could not have been acquitted, as he was never committed for trial, and could not be pardoned, as he would probably reject the offer if made.—Behary Lall Bose, 7 W. R., 44.

If any person to whom a tender of pardon has been made upon certain conditions, does not act up to those conditions, the offer is null and void, and he may be committed for trial. If the failure to fulfil the conditions occurs after the offer of pardon has been accepted, and the person examined as a witness, the Court of Session can order his commitment; but if the failure is before the case goes out of the Magistrate's hands, that officer is competent to deal with him.—Calcutta High Court, 535, 1863.

The Calcutta High Court h s held that the statement made by a person when under promise of pardon is not evidence against him after that pardon has been revoked, inasmuch as such would be contrary to S. 203, (see case of Radhanath Dosadh, 8 W. R., 53, and quoted in note to S. 202, *ante*); but there would apparently be no such objection to its being used against the prisoner if he be charged with having intentionally given false evidence in some statement made therein.

The same Court, by a Full Bench, has held that the proviso to S. 28 Act II. of 1855, applied to Mofussil Courts, and that corroborative evidence was necessary in support of the testimony of a single witness in the case of perjury [Lal Chand Kowrah, 5 W. R., 23], and also in support of the testimony of one or more accomplices.—Dwarka, 5 W. R., 18.

* S. 13.

When Sudder Court or Court of Session may direct a tender of pardon.

210. It shall be competent to a Court of Session,* at the time of trial, and also to the Sudder Court as a Court of reference,† in cases tried with the aid of Assessors, to instruct the Magistrate in like manner to tender a pardon to one or more persons supposed to have been directly or indirectly concerned in or privy to any such offence, with the view of obtaining his or their evidence on the trial.

† Ch. 28.

The Sessions Court cannot itself offer conditional pardon to a prisoner, but should instruct the Magistrate to do so whenever it is thought necessary.—7. W. R., 1 C. L. The tender cannot be made before the trial, (Nistarinee Debya, 7 W. R., 114); but it may be made at any time during the trial, even after the evidence for the defence has been entered upon.—8 W. R., 13 C. L.

‡ S. 13.

§ S. 19

‖ See ch. 28.

When Sudder Court or Court of Session may direct the commitment of a person to whom a pardon may have been tendered.

211. If it shall appear to a Court of Session‡ at the time of trial, or to the Sudder Court§ as a Court of reference‖, that any person who shall have accepted an offer of pardon, has not conformed to the conditions under which the pardon was tendered, either by wilfully concealing anything essential, or by giving false evidence or information, it shall be competent to such Court to direct the commit-

ment of such person for trial for the offence in respect of which the pardon was tendered.

A Sessions Judge should not forthwith convict a person who has accepted a conditional pardon, and has failed to conform to these conditions, as the law requires him "to direct the commitment of such person for trial." As it did not appear that the accused had been prejudiced in his trial by this informality, the Calcutta High Court did not interfere as a Court of Revision.—4 W. R., 4 C. L.

Bail not to be taken for certain offences.

212. When any person shall appear to be brought before a Magistrate* accused of any offence entered as not bailable in Column 5 of the Schedule annexed to this Act, such person shall not be admitted to bail, if there appear reasonable grounds for believing that he has been guilty of the crime imputed to him; but if the evidence given in support of the accusation shall, in the opinion of the Magistrate, not be such as to raise a strong presumption of the guilt of the accused person, and to require his committal, or such evidence shall be adduced on behalf of the accused person as shall, in the opinion of the Magistrate, weaken the presumption of his guilt, but there shall appear to the Magistrate in either of such cases to be sufficient ground for further enquiry into his guilt, the accused person shall be admitted to bail pending such enquiry.

* S. 15.

When may be taken.

If a Magistrate considers that there are reasonable grounds for believing that a person accused of an offence, which is not bailable, has been guilty of the same, he cannot admit him to bail; but it would be seen from S. 436 that no such restriction is placed on the powers of the Court of Session which "may "direct that *any* accused person shall be admitted to bail, or that the bail "required by the Magistrate be reduced."

"When any person is required by any Criminal Court to give bail, it shall be lawful to such Court to permit such person to deposit a sum of money or Government Promissory Notes to such amount as such Court may fix in lieu of such bail."—S. 437.

When bail shall be taken.

213. When any person shall appear or be brought before a Magistrate† accused of any of the offences specified in Column 5 of the Schedule annexed to this Act, as bailable, he shall be admitted to bail.

* S. 15.

The Court of Session may direct that the bail required by a Magistrate be reduced S. 436; and 437 declares that it shall be lawful for a person called upon to give bail to deposit a sum of money, or Government Promissory Notes to such amount as may be fixed in lieu of bail.

The Calcutta High Court [Cir. 15, 1864] deprecated the employment of the Police in enquiries as to the sufficiency, or otherwise, of the security offered, as such enquiries tended to prolong the detention in Jail of the accused person offering the security. The Court stated that it is the duty of a Magistrate to satisfy himself that the sureties are, in point of substance, persons of whom it may reasonably be presumed, that they can, if necessary, satisfy the terms of the bail-bond.

Recognizance of accused and sureties.

214. When a Magistrate* shall admit to bail any person accused or suspected of any offence, a recognizance in such sum of money as the Magistrate* may think sufficient, shall be entered into by the person so accused, and one or more sureties, conditioned that such person shall attend during the preliminary enquiry, and if required, shall appear when called upon at the Court of Session† to answer the charge.

* S. 15.

† S. 13.

It is the duty of a Magistrate to satisfy himself that the sureties are, in point of substance, persons of whom it may reasonably be presumed, that they can, if necessary, satisfy the terms of the bail-bond.—Calcutta High Court, Cir. 15, 1864.

Insufficient bail.

215. If, through mistake or fraud, insufficient bail has been taken, or if the sureties become afterwards insufficient, the accused person may be ordered by the Magistrate‡ to find sufficient sureties, and, in default, may be committed to prison.

‡ S. 15.

Bail may be taken at any time before conviction.

216. If the accused person cannot find sureties when called upon, he shall be admitted to bail upon finding the same at any time afterwards before conviction.

Discharge on bail.

217. After the recognizances shall have been duly entered into, the Magistrate,§ in case the accused person shall have appeared voluntarily, or shall be in the custody of some Officer, shall thereupon discharge him ; and in case he shall be in some prison or other place of confinement, shall issue a warrant of discharge to the Jailor or other person having him in his custody, and such Jailor or other person shall thereupon liberate him.

§ S. 15.

Discharge of sureties.

218. The sureties for an accused person may at any time apply to the Magistrate to be discharged from their engagements. On such an application being made, the Magistrate shall issue his warrant, directing that such person be brought before him. On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the recognizances of the sureties to be discharged, and shall call upon such person to find other sureties, and, in default, may order him to be committed to prison.

Proceedings to compel payment of penalty by accused.

219. Whenever, by reason of default of appearance of the person executing the personal recognizance, the Magistrate shall be of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance, he shall proceed to enforce the penalty by the attachment and sale of the moveable property* belonging to such person, which may be found within the jurisdiction of the Magistrate of the District.†

* S. 6.

† Ss. 14, 18.

The Bombay High Court has held that a Magistrate has no power to forfeit only a portion of the recognizances entered into, and that such can be remitted only by Government [1 Bombay, 138]; but the Calcutta High Court [644, 1864] has held the contrary, on the principle that, since the greater contains the less, if a Criminal Court can realize the whole, it can also realize a portion

Proceedings to compel payment of penalty by sureties.

220. Whenever, by reason of default of appearance by the person bailed, the Magistrate shall be of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance of the surety or sureties, he shall give notice to the surety or sureties to pay the same, or to show cause why it should not be paid; and, if no sufficient cause be shown, the Magistrate shall proceed to recover the penalty from such surety or sureties by the attachment and sale of any moveable‡ property belonging to such surety or sureties which may be found within the jurisdiction of the Magistrate of the District,§ and if the penalty be not paid, and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the Magistrate, in the Civil Jail, during a period not exceeding six months.

‡ S. 6.

§ Ss. 14, 18.

In what cases the powers given by the last two Sections may be exercised.

221. The powers given by the last two preceding Sections may be exercised by every Criminal Court‖ in every case in which a personal recognizance or bail has been given for the appearance of a party or witness, if default is made by the non-appearance of such party or witness before such Court according to the conditions of such recognizance or bail.

‖ S. 11.

Warrant of commitment how to be directed, &c.

222. Every warrant for the commitment of a person to custody shall be directed to some Jailor or other Officer or person having authority to receive and keep prisoners, and

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shall be in the form (C) given in the Appendix, or to the like effect.

With whom to be lodged.

223. The warrant of commitment shall be lodged with the Jailor, if he be in the Jail; and if he be not in the Jail, with his deputy. If the Jailor has no deputy, the warrant may be lodged with any Officer of the Jail then being in the Jail.

When Magistrate may adjourn the enquiry.

224. If from the absence of a witness, or from any other reasonable cause, it shall come be necessary or advisable to defer the examination, or further examination, of witnesses, it shall be lawful for the Magistrate by a written order, from time to time, to adjourn the enquiry, and to remand the accused person for such time as shall be deemed reasonable, not exceeding fifteen days; provided that, instead of detaining the accused person in custody during the period for which he shall be so remanded, the Magistrate may discharge him, upon his entering into a recognizance, with or without a surety or sureties, at the discretion of such Magistrate, conditioned for his appearance before the Magistrate at the time and place appointed for the continuance of such examination.

See Ss. 221, 219, 220, for the procedure for the enforcement of the penalties of a recognizance.

When the proceedings have been completed against an accused person, the decision of the case or his commitment to the Court of Session should not be deferred, merely because the principal offenders have not been apprehended.—3 W. R., 21 C. L.

In a case in which the evidence was taken by a Magistrate who left the District without completing it, the Calcutta High Court held that, if his successor or the Officer who took up the case should find enough on the recorded evidence to warrant the commitment of the accused, he was not *bound* to examine the witnesses *de novo*, but was at liberty to do so, if he was not so satisfied.—7 W. R., 3 C. L.

It is, however, different in the case of a Sessions Judge.—See case of Charroo and another, Suth's Rep., 1864, p. 32.

When accused person to be discharged.

225. When a Magistrate finds that there are not sufficient grounds for committing the accused person to take his trial before the Court of Session,* or for remanding him, he shall discharge him, unless it shall appear to the Magistrate that such person should be put on his trial before himself, in which case he shall proceed under Chapter† XIV. of this Act.

* S. 13.

† Ss. 256, 255.

A person discharged under S. 225 may be admitted as a witness for the prosecution.—Behary Lall Bose, 7 W. R., 44.

In the case of offences not triable by a Magistrate, the Court of Session may order the commitment of any person who may have been discharged by the Magistrate, or may order an enquiry into any complaint of such an offence which the Magistrate may have dismissed without enquiry.—S. 435.

Where, on account of any of the general exceptions contained in Chapter IV. of the Penal Code, the act or omission charged does not amount to an offence, the Calcutta High Court has held that the Magistrate should discharge the accused, and that he would be wrong in committing him for trial (Cir. 1, 1867); but by a more recent order (Cir. 7, 1867) this rule has been declared not to apply to cases in which the question arises, whether the accused, at the time that he did the act with which he is charged, was of unsound mind, because, when a prisoner is acquitted on the ground of insanity, the Jury or Court is required (Ss. 393, 394) to find specially whether he committed the act or not, and if he be found to have committed it, he is to be kept in safe custody. The High Court at the same time declared that commitment in such cases was discretional with Magistrates, but that in its opinion there could be no doubt as to the propriety of committing the accused in order to the taking of proceedings under Ss. 393, 394.

A Magistrate having discharged certain persons, the Sessions Judge, under S. 435, ordered their commitment. The Calcutta High Court held that, to give effect to this order, it was not necessary for the Magistrate to commence proceedings *de novo*, but that he acted in a legal and regular manner in merely proceeding in accordance with Ss. 226, 227, *et seq.*

An order of discharge under S. 225 does not bar further proceedings being instituted by a Magistrate, as it cannot be regarded as an acquittal of an offence which such an officer had no jurisdiction to try. An acquittal supposes a trial, whereas an order passed under S. 225 would occur merely in a preliminary enquiry.—3 W. R., 21 C. L.

The rulings of the Calcutta High Court and of the Agra Sudder Court, as to the power of one Magistrate to re-open a case after another has discharged the accused, are contradictory. The law was thus laid down by the Calcutta High Court in the case of Tilkoo Goala (8 W. R., 61):—

The discharge of a person accused of an offence triable by the Court of Sessions is no bar to his being again apprehended and brought before a Magistrate with a view to commitment. The Magistrate may proceed in such a case of his own motion, and his authority to do so is quite independent of an order from the Court of Session under S. 435, Code of Criminal Procedure, which applies to cases where the Magistrate has not thought fit to commit.

As to the question whether a commitment made by a Joint-Magistrate under the order of the Magistrate of the District is regular, it seems to me not to affect the question in any way that the Joint-Magistrate has received an order of the Magistrate.

Legally, and for the purposes of a commitment, the two officers have equal powers, and the Joint is not legally bound to act upon the instructions of the Magistrate in a judicial preceeding, such as the commencement of a preliminary enquiry; but the Magistrate of the District is the executive superior, and good sense would usually dictate obedience.

The Agra Sudder Court, on the other hand, has held that, after an accused person has been discharged by a Magistrate, it is only the Sessions Court that can, under S. 435, re-open the case.—4 Agra, 190; 5 Ibid, 246.

When defendant to be committed for trial.

226. When evidence has been given before a Magistrate,* which appears to be sufficient for the conviction of the accused person of an offence which is triable exclusively by the Court of Session,† or which, in the opinion of the Magistrate,* is one that ought to be tried by the Court of Session,† the accused person shall be sent for

* S. 15.

† S. 13.

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trial by the Magistrate* before the Court of Session.† If the Magistrate* is a Justice of the Peace, and the accused person is a European British subject, he shall be sent for trial before the Supreme Court of Judicature.‡

* S. 15.
† S. 13.
‡ Now High Court in each Presidency town.

Under S. 429 every sentence or order of a Criminal Court, together with the reasons for making or passing the same, should be written in the Vernacular language of the presiding Officer, and be dated and signed by him at the time of his making or passing the same. The original should be filed with the record of proceedings, and a translation, when the original is recorded in a different language from that in ordinary use in proceedings before the presiding officer, should be incorporated with the record of the sentence or order. S. 430 permits an officer to write the sentence or order in English, if that be not his Vernacular language.

In the case of commitments forms of calendars have been ordered by the Calcutta High Court and the Agra Sudder Court for use among Magistrates. The following is the form in use in Lower Bengal, and is almost similar to that in the North-Western Provinces:—

CALENDAR of persons committed or held on Bail by the Magistrate of to take their trial before the Sessions Court of Zillah in 186 .

1	2	3	4	5	6	7	8	9	10	11	12	13
Date of commitment, and name of Committing Officer.	Number of Calendar for the year.	Detail of persons committed.			Abstract of charge.	Witnesses for prosecution.			Abstract of enquiry and grounds of commitment.	Witnesses for defence.		
		Number.	Name, Father's name, Age and Residence.	Section of Penal Code applicable.	Offence charged, and date of occurrence.	Number.	Name and date of depositions.	Abstract of facts spoken to by the Witnesses.		Number.	Name of of Witness.	Nature of evidence.

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The grounds of commitment should be copied into the Calendar (Khoda Sonthal, 6 W. R., 6), also the prisoner's age.—Agra Sudder Court, Cir. 6, 1866. A Magistrate should, in the grounds of commitment, specify with exactness and precision, the proof against each individual prisoner, and the manner in which it is supported.—Kodai Kahar, 5 W. R., 6.

A Magistrate should on no account commit a person for trial by a Court of Session unless there be good ground on the evidence for expecting a conviction, (3 W. R., 10 C. L.); but if he is in doubt where the evidence for the defence is nearly as strong as that for the prosecution, he should commit; but if the evidence for the prosecution is manifestly false, of course there should be no commitment.—8 W. R., 12 C. L.

Having once committed certain persons to the Court of Session, a Magistrate is not competent to permit the case to be compromised.—Salim Sheikh, 2 W. R., 57. He would not have this power in any except petty cases tried under Chapter XV.—See note to S. 270, *post*.

When several persons are charged with offences of various degrees arising out of the same act or transaction, all implicated therein, against whom sufficient evidence is forthcoming, should be committed to the Court of Session, if an offence beyond the cognizance of a Magistrate, or one which, in the opinion of the Magistrate having jurisdiction in the case, ought to be tried by the Court of Session, be chargeable against *any* of the accused.—Agra Sudder Court, Cir. 14, 1862; Calcutta High Court, Cir May 19th, 1862.

A Magistrate having committed a person who appeared before him by agent [S. 182], the Calcutta High Court (Hurnath Rai, 2 W. R., 50) held that the commitment was not necessarily illegal; but as the agent had not been required to give in a list of the witnesses whom he wished to have summoned for his principal, the Court directed the Magistrate to make the demand.

If, in the opinion of a Sessions Judge, a commitment made to his Court is illegal, he should, under S. 434, refer the case for the orders of the High Court, (Calcutta High Court, Cir. 7, 1864); but the insufficiency of legal evidence against the prisoner is no ground for such reference.—Gokul Bandari, 1 W. R., 8.

227. As soon as the charge on which the accused person is to be tried, has been prepared as hereinafter* directed, it shall be read to him, and a copy or translation of it shall be furnished to him, if he require it. The accused person shall be required at once to give in, orally or in writing, a list of witnesses whom he may wish to be summoned to give evidence on his trial before the Court of Session† or Supreme Court.‡ It shall be in the discretion of the Magistrate to allow the accused person to give in any further list of witnesses at a subsequent time. The Magistrate shall receive the list, and summon the witnesses to appear before the Court before which the accused person is to be tried. The provisions of Sections 187, 188, 189, 190, 191, and 192, so far as they relate to the attendance of witnesses, shall be applicable to witnesses named by the accused person in the list above mentioned.

Copy of charge to be furnished to accused person.

* See Ss. 233, 243.

Witnesses for the defence on the trial.

† S. 13.

‡ High Court in its Extraordinary Original Criminal Jurisdiction.

Commitments made to the High Courts [late Supreme Courts] by Magistrates referred to in the foregoing, would be only in cases in which the persons

to be committed are European British subjects.—See Ss. 28, 29, 30, Act XIII. of 1865, Appendix B, for the procedure after the commitment of a European British subject for an offence not committed in a Presidency Town.

As the examination of an accused is recorded in the language in which it is delivered [S. 205], the copy or translation of the charge which he is entitled to receive, should be in the same language.—Calcutta High Court, February 3rd, 1864. When the charge on which the accused is to be tried has been prepared and read to him, the facts on which he is charged, and to which he has to answer, should at the same time be specifically explained to him.—Agra Sudder Court, Cir. 1, 1863.

Magistrate may refuse to summon unnecessary witness, unless a deposit be made to defray the expenses of such witness.

228. If the Magistrate shall be of opinion that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, he may require the accused person to satisfy him that there are reasonable grounds for believing that such witness is material, and if the Magistrate be not so satisfied, he shall not be bound to summon the witness unless such a sum shall be deposited with the Magistrate, as he shall consider necessary, to defray the expense of obtaining the attendance of the witness.

Ordinarily a Magistrate is bound to summon witnesses cited by a person committed for trial to the Court of Session. He can refuse to do so only in the exceptional cases mentioned in S. 228.—3 Agra, 36.

A Magistrate cannot absolutely refuse to summon any witness named by an accused person, because, when examined before him, that witness appeared to know nothing. He should rather act as directed by S. 228.—3 W. R., 16 C. L.

Record to be forwarded to the Superior Court.

229. When a commitment is made to the Court of Session,* the record of the Magistrate shall be forwarded to such Court, together with any weapon or other article of property connected with the case. When a commitment is made to the Supreme Court of Judicature,† such record and such weapon or other article shall be forwarded to the Clerk of the Crown, and if any part of such record shall not be in the English language, a translation thereof in the English language shall be forwarded therewith.

* S. 13.

† High Court in its Extraordinary Original Criminal Jurisdiction.

For the rules regarding the preparation of a calender of commitment, see note to S. 226, *ante*.

A Magistrate should not incorporate with the record reports of the proceedings of the Police, which are not legal evidence (2 W. R., 7 C. L.), nor is he bound to send such papers for the perusal of the Sessions Judge.—4 W. R., 8 C. L.

"Any Justice of the Peace or Magistrate who shall commit to custody or hold to bail any person for trial before the High Court for an offence committed, or which, according to law, may be dealt with as if it had been committed within the local limits of its Ordinary Original Civil Jurisdiction, shall, together with all examinations, informations, bailments, and recognizances, now required to be delivered to such Court before the trial, deliver to the Clerk of the Crown a written instrument of charge signed by him,

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stating for what offence such person is so committed or held to bail."—Act XIII. of 1865, S. 3.

The Calcutta High Court, by its Cir. 7 of 1866, directed that all warrants for the commitment of such European British subjects should be directed to the Superintendent of the Presidency Jail in Calcutta, and should be in the Form C., (Appendix of Forms, Code of Criminal Procedure); and in pursuance of S. 9, Act XII. of 1865, the following words should be added at the end of the form before the date,—"and you are hereby required to have the body or bodies of the said before the said High Court for trial at the Sessions of the Court next ensuing the date hereof."

Act XII. of 1865 has been repealed by Act XII. of 1867 since the issue of the above orders; but the provisions of S. 9 of the former are re-enacted in S. 12 of the latter Act.

For further rules regarding the Procedure in the case of European British subjects charged with the commission of Criminal offences, see Appendix B.

230. When the preliminary enquiry is concluded, the accused person shall, if he demands them at a reasonable time before the trial, be furnished with copies of the depositions, which shall be made at his expense.

Copies of depositions to be furnished to accused.

Copies of depositions furnished to an accused person should be written on unstamped paper, and authenticated by the presiding Judicial Officer.—Madras High Court.

Act XIII. of 1865, S. 5, contains a somewhat similar rule for cases committed for trial before a High Court, except that it fixes the maximum rate chargeable to the accused person at one anna for each folio of ninety words.

231. When the accused person is committed to take his trial before the Court of Session,* the Magistrate shall issue an order to the Government Pleader or other Officer appointed by the Government to conduct prosecutions before the Court of Session,* notifying such commitment, and stating the offence in the same form as the charge. Nothing in this Section shall preclude the Magistrate, if he shall think fit, from appointing a person other than such Government Pleader or Officer to conduct the prosecution.

When commitment is made, Magistrate to give notice to Government Pleader, &c.

* S. 13.

If a Sessions Judge find that the proceedings, upon which a commitment is based, are altogether illegal, he should at once, under S. 434, represent the illegality to the High Court, who will be in a position to annul the whole proceedings including the commitment.—Calcutta High Court, Cir. 7, 1864.

Insufficiency of legal evidence against a prisoner committed for trial is no proper ground for such reference.—Gokul Bandaree, 1 W. R., 8.

The following rules have been laid down for the conduct of Criminal prosecutions in the Presidency of Bengal. They also define the relations between a Magistrate and the Remembrancer of Legal Affairs:—

RULE I.

A Magistrate may take the opinion of the Legal Remembrancer on any point within the scope of Rule VIII.

When legal advice may be sought.

RULE II.

Procedure when information is received of any appeal, &c., to the High Court.

Whenever a Magistrate shall be informed that any Criminal case has been, or is about to be, transmitted to the High Court, in appeal or revision, or on reference, he shall at once communicate with the Legal Remembrancer, giving him a brief abstract of the case, and submitting his opinion as to whether or not there should be any appearance for the prosecution.

RULE III.

Duties in forwarding information, &c.

The Magistrate is bound to furnish the Legal Remembrancer with any information or explanations called for with reference to Criminal cases pending before the High Court.

RULE IV.

Employment of a prosecutor in Criminal cases.

1. The Magistrate is empowered to employ the Government Pleader or any other Pleader of the Judge's Court, or any one of his own Amlah in the prosecution of Criminal cases committed to the Sessions. The principle of selection should be, thorough knowledge of the case by attendance on it from its preliminary proceedings to its committal, trustworthiness, knowledge of law and procedure, skill and practice in the conduct of cases, and leisure to attend the conduct of the case with reference to other avocations. The person selected should combine as many of the most important of the above qualifications as is possible.

Payment of a prosecutor in Criminal cases.

2. Whoever may be the person employed by the Magistrate to conduct the prosecution, he shall be entitled to a special fee. Such fee shall be regulated in amount by the time and labor bestowed on the case, by the issue of the case so far as it depended on the exertions of the prosecutor, and by a fee in proportion to his position and gains generally.

Form and submission of Bill of Fees.

3. The Magistrate shall submit a bill of fees granted for the above purposes for the sanction and counter-signature of the Legal Remembrancer. The Bill shall be in Form A, and the column of remarks shall state, in any particular case, whether the prosecutor has well or ill-conducted it.

RULE V.

Duties of Government Pleader in Criminal Cases.

Government Pleaders to give information of Criminal cases sent in appeal or revision, or referred to the High Court.

Whenever in any Criminal case the prisoner himself, or some person on his behalf, shall apply to the Sessions Court to appeal to the High Court, or whenever the High Court shall send for any record in order to an appeal or revision, or whenever the Sessions Court shall refer any Criminal case to the High Court for decision, the Government Pleader in the District Court shall at once give information to the Magistrate and to the Legal Remembrancer.

RULE VI.

Procedure by Government Pleaders in the High Court in Criminal cases referred, appealed, or revised.

Whenever a Government Pleader in the High Court shall receive notice that the record of any Criminal case has been received in, or has been sent for, by the High Court for the hearing of any reference, appeal, or revision of the same, he shall at once give notice to the Magistrate, requesting to be favored with any special instructions for the conduct of the case, and shall communicate with the Government Advocate on any points that seem specially to require it.

RULE VII.

Duties of the Legal Remembrancer as Government Advocate.

Government Advocate ex-officio a Pleader in the High Court.

Under the title of Government Advocate, the Legal Remembrancer is ex-officio a Pleader in the Appellate side of the High Court, as well on the Criminal as on the Civil side.

RULE VIII.

Duties of the Legal Remembrancer as Legal Adviser.

The Legal Remembrancer, in his capacity as Government Advocate, is the Legal Adviser of all officers subordinate to the Local Government of Bengal who may require his opinion on points of law, arising out of the performance, as well of the ministerial as of their judicial functions.

RULE IX.

Criminal Prosecutions.

Conduct of Criminal prosecution

In all Criminal cases before the High Court, whether in appeal or on revision, or on reference, the Government Advocate has ordinarily a discretion to appear for the prosecution, either personally, or by one of the Pleaders subordinate to him.

Where the prisoner employs Counsel.

2. Whenever in any such Criminal cases the prisoners are represented by Counsel, the Government Advocate shall appear for the prosecution, either in person, or by one of the Pleaders subordinate to him, at his discretion.

Where the Court calls for an appearance.

3. Whenever the High Court may think it conducive to the better administration of justice, they may call upon the Government Advocate to prosecute in any Criminal case before them, and the Government Advocate shall thereupon appear in such case in person, or by one of the Pleaders subordinate to him, at his discretion.

Where the Government Advocate differs from local officers.

4. The Government Advocate has a discretion to appear or not to appear in the prosecution of any Criminal case before the High Court, and this notwithstanding any opinion, adverse to that he has himself formed, that may have been expressed by the officers submitting the case to him.

A.

No. and date of Calendar	Name of Parties.	Number of Defendants.	Crime.	Name and designation of Officer who conducted the prosecution at the Sessions.	Whether the prisoner confessed.	Number of witnesses for the prosecution examined at the Sessions.	Number of witnesses for the defence examined at the Sessions.	Number of days the case was in course of trial at the Sessions Court.	Whether prisoner was acquitted or convicted by the Sessions Judge.	Amount of proposed remuneration.	REMARKS.

Recognizances of prosecutors and witnesses.

232. Prosecutors and witnesses for the prosecution, whose attendance may be necessary before the Court of Session,* shall execute before the Magistrate recognizances in the Form (E) given in the Appendix, or to the like effect, to be in attendance when called upon at the Court of Session,* to prosecute or to give evidence, as the case may be. If any prosecutor or witness shall refuse to attend before the Court of Session,* or to execute the recognizance above directed, it shall be competent to the Magistrate to detain such presecutor or witness in custody, until he shall execute such recognizance, or until the time when his attendance at the Court of Session* is required, when the Magistrate shall forward such prosecutor or witness under custody to the Court of Session.*

* S. 13.

For the procedure for the enforcement of the penalties on this recognizance, see Ss. 219, 220, 221.

CHAPTER XIII.—Ss. 233—247.

Of the Charge.

The following contains a resumé of all the principal orders of the Calcutta High Court regarding the mode in which charges should be drawn up, and the law on the subject.

A charge is necessary in all Criminal trials, except in cases tried under Chapter XV. of the Code of Criminal Procedure, and in summary convictions under the first part of S. 163 of the same Code.

A charge should follow as much as possible the form prescribed in S. 239. It should describe the imputed offence as nearly as possible in the language of the Indian Penal Code, or the special or local law, and should refer to the Section of the law under which the offence is punishable.

If there be any special exception or exceptions in the Section of the Indian Penal Code, referred to in the charge as the Section under which the offence charged is punishable, the existence of such exception or exceptions should be distinctly denied in the body of the charge. The Sections containing such exceptions are the following :—Ss. 136, 323, 324, 325, 326 ; but the Calcutta High Court, Cir. 6, 1867, has held that this rule does not apply to a charge under S. 325, the form of which is given in S. 239, *post*. There would seem to be no reason why charges under Ss. 323, 324, 326, should not be drawn up in a similar manner *mutatis mutandis*. A mere denial of the existence of an exception is not sufficient. The exception should be fully set forth in the charge, as otherwise it cannot be intelligible to the person charged.

It is not necessary to deny the existence of special exceptions in charges of murder (S. 302) ; culpable homicide not amounting to murder (S. 304) ; voluntarily causing grievous hurt (S. 325). The form for a charge of murder is given in S. 243, *post;* and those for culpable homicide not amounting to murder, and voluntarily causing grievous hurt, in S. 239.—Calcutta High Court, Cir. 6, 1867.

If there be any doubt as to the offence of which an accused person is guilty, or if he appear to have been guilty of more than one offence,

every such offence should be charged in a separate head of the charge. Offences committing at different times, and unconnected with one another, should not only be entered into separate charges, but should form the subject of separate trials. When some men were tried in one trial on three charges, relating to three separate and distinct robberies committed on the same night in three different houses, the Calcutta High Court ordered a new trial, holding that the prisoners must be tried separately on each of these three cases — Itwaree Dome, 6 W. R., 83. See also Foujdar Roy, 9 W. R., 14. Where a riot was charged, and the contending parties were both committed for trial, a joint charge should not have been prepared, since their offences were separate, and they had not a common object.—Sheikh Bajee, 8 W. R., 52.

Each head of a charge should be complete in itself. What are substantially the same offences, should not be repeatedly charged in slightly different forms, entering into details regarding the weapon used, &c., &c.; one count, charging each specific offence, and describing it with a reasonable degree of certainty, will suffice.

The termination of a charge varies according to the nature of the case with which it is connected.

If the case be a trial before a Magistrate under Chapter XIV., Criminal Procedure [S. 250], or a preliminary enquiry held by a Sessions Court [S. 172, Criminal Procedure], each head of the charge will terminate thus: "and he has hereby committed an offence punishable under Section —— of the Indian Penal Code (or any special or local law, quoting it) and within my cognizance."

The body of the charge should in such cases terminate thus: "and I hereby direct that the said A. B. be tried on the said charge."

If the case be a preliminary enquiry held by a Magistrate [Chapter XII., Criminal Procedure, S. 233], or by a Civil Court [S. 173], each head of the charge should terminate thus: "and he has hereby committed an offence punishable under Section ——of the Indian Penal Code [or any special or local law, quoting it], and within the cognizance of the Court of Session."

The body of the charge should in such cases terminate thus: "and I hereby direct that the said A. B. be tried by the said Court on the said charge."

The great object to be borne in mind by an officer in drawing up a charge is to render, as far as possible, intelligible to the accused person, the offence with which he is charged, without entering unnecessarily into detail in describing it. This will be best attained by following the text of the Indian Penal Code (or the special or local law, as the case may be), transposing the terms to suit the particular case. When, however, there are in one Section of the law two distinct offences, *e. g*, giving or fabricating false evidence [S. 193, Indian Penal Code], or kidnapping or abducting [S. 366], or offering resistance, or illegal obstruction to lawful apprehension, or escaping from lawful custody [S. 224], these offences should be charged in separate heads of the charge.—1 W. R., 10 C. L.; 2 *Id.* 13.

As the law requires that the Section under which the offence charged is punishable should be referred to, when a Section is referred to which makes an act a punishable offence without prescribing any specific punishment, beyond stating that such offence shall receive the same punishment, as some other offence, it is necessary that both the Section referring to some other Section for the punishment awardable, and the Section so referred to, should be quoted in the charge. For instance, the "fraudulently or dishonestly using as genuine a document which a person knows to be a forged document," is made an offence by S. 471, Indian Penal Code: but that Section prescribes no specific punishment, merely declaring that a person committing this offence shall be punished in the same manner as if he forged such document. Now, the punishment for forgery depends upon the nature of the document forged, and therefore, in order to determine the precise punishment for the offence defined in S. 471, it will be necessary to refer to one of the following Ss. 465, 466, 467, 468, 469. Similarly, with regard to charges under Ss. 195, 196, 197, 198, 199, 200, 511, of the Indian Penal Code.—8 W. R., 22 C. L., 2 *Id.* 2, 9, 17: 3 *Id.* 8, 12.

Where a Section of the law, *e. g.*, S. 397, Penal Code, is merely declaratory of the punishment to be imposed on conviction of a certain aggravated form of an offence, the charge should not be laid under that Section alone, but under it, coupled with that of the substantive offence.—8 W. R., 14 C. L.

As regards charges of abetment, of which there are different degrees, involving different punishments, it is necessary that the particular nature of the abetment should be stated, in order that the accused person may have a better opportunity of disproving it, and that the punishment may be the better determined (1 W. R., 9 C. L. 2 *Id.* 1, 7 : 3 *Id.* 15, 17 : 8 *Id.* 9, 10). Thus, if an abetment under S. 109, Indian Penal Code, be charged, it should be stated that the act abetted was committed in consequence of the abetment of the accused person, and that there is no express provision in the Indian Penal Code for the punishment of such abetment. The charge should further refer to the Section by which the abetment is made punishable, and, if no specific punishment be therein mentioned, also to the Section containing the punishment for the act abetted, [Ss. 109, 110], or for the act committed [Ss. 111, 113].

The abetment of not more than one offence should form one head of the charge. Abetments of different degrees should be charged in separate heads.—5 W. R., 5 C. L. 4 *Id.* 11.

In some Sections of the Indian Penal Code, the offence is described by reference to some other Section—*e. g.*, S. 250 relates to the delivery of a coin, with respect to which the offence described under S. 246 or S. 248 had been committed. A charge under S. 250, and Sections of this description, should contain a full explanation of the terms of the Sections thus referred to, as otherwise a charge will not be intelligible to the accused person.—2 W. R., 5 C. L. Similarly, the particular statement upon which a charge of intentionally giving false evidence [S. 193, Penal Code] has proceeded, should be specified ; (Bhattoo Lalljee, 2 W. R., 51 : Fazul Meeah. 5 W. R., 71 : 4 W. R., 4 C. L. : Agra Sudder Court, Cir. 14, 1866) ; also the offence with which one person has falsely accused another [S. 211] (Arjoon, 1 Bombay 88) ; also the common object, in prosecution of which an offence was committed by any member of an unlawful assembly, so as to make each member liable for that offence [S. 149] (4 W. R., 9, 11, C. L., 5 *Id.* 4) where a riot is charged, and the contending parties have been both committed for trial, a joint charge should not have been prepared, since their offences are separate, and they had not a common object.—Sheikh Bajee, 8 W. R., 52.

So also the nature of an office held by a public servant, in cases in which acts against such persons as public servants are made criminal offences [Chapter IX.] (5 W. R., 8 C. L.) also a description of the weapon used when the law requires that it shall be a deadly weapon (S. 326) (8 W. R., 1, 17 C. L.) ; the name of the person from whose guardianship the minor was kidnapped (S. 361) (5 W. R., 1 C. L.) ; the offence for which the accused person was lawfully detained when he escaped from custody (S. 224) (5 W. R., 1 C. L.) ; the property in respect of which a criminal breach of trust has been committed (Ss. 407, 408, 409) (8 W. R., 3 C. L.) ; the nature of the document alleged to have been forged (Ss. 469, *et seq.*) (3 W. R., 7 C. L.) ; the particular offence in respect of which the accused person either omitted to give information, or gave information which he knew to be false, as well as what his precise duty was in the matter.—(Ss. 176, 177). Moosubroo, 8 W. R., 37.

The fact that the accused person has been previously convicted should not be charged against him : it should be brought forward after the conclusion of the trial, and should then be taken into consideration in determining the sentence to be passed. To enter such a circumstance in a charge would be apt, very improperly, to prejudice a Jury.—5 W. R., 10 C. L. ; see also the case of Gopal Thakoor, 6 W. R., 72. The Madras High Court requires that the previous conviction should be made a separate head of the charge on the trial for the subsequent offence ; that the prisoner should be first tried on the substantive charge then under enquiry ; and that, if he should be convicted on that charge, he should then be charged with and tried on the fact of his previous conviction

What the charge is to contain.

233. When the Magistrate has determined to send the accused person before the Court of Session* for trial, he shall make a written † instrument under his hand and seal, declaring with what offence the accused person is charged, and shall direct the accused person to be tried by such Court on such charge. A copy of this instrument shall be forwarded with the record of the preliminary enquiry to the Court of Session* before which the accused person is to be tried, and a copy shall also be sent to the Public prosecutor, or to the Officer appointed to conduct the prosecution.

* S. 13.
† S. 10.

See also S. 227.

How the offence is to be described.

234. The charge shall describe the imputed offence as nearly as possible in the language of the Indian Penal Code, and shall refer to the Section under which such offence is punishable.

Absence of General Exceptions under the Penal Code to be assumed.

235. It shall not be necessary to allege in the charge any circumstances for the purpose of showing that the case does not come, nor shall it be necessary to allege that the case does not come, within any of the General Exceptions contained in Chapter IV.‡ of the Indian Penal Code, but every charge shall be understood to assume the absence of all such circumstances.

‡ Ss. 76-106.

If a Magistrate is of opinion that on account of any of the General Exceptions contained in Chapter IV. of the Penal Code, the act or omission charged does not amount to an offence, he should discharge him. (Calcutta High Court, Cir. 1, 1867); but this rule has been declared not to apply to the case of a person who appears to be of unsound mind when committing the offence charged.—Cir. 7, 1867. See note to S. 225, *ante*.

Evidence as to General Exception.

236. It shall not be necessary at the trial, on the part of the prosecutor, to prove the absence of such circumstances in the first instance; but the accused person shall be entitled to give evidence of the existence of any such circumstances, and evidence in disproof thereof may then be given on the part of the prosecutor.

Special ground of exception from absence of circumstances not to be assumed.

237. When the Section referred to in the charge contains an exception not being one of such General Exceptions, the charge shall not be understood to assume the absence of circumstances constituting

such exception so contained in the Section, without a distinct denial of the existence of such circumstances.

These exceptions occur in charges under Ss. 136, 323, 324, 325, 326 of the Indian Penal Code; but by their Circular 6, 1867, the Calcutta High Court seem to have ruled that the model form in C. L. 6, S. 239, *post*, has negatived the operation of this Section as regards charges under S. 325, Penal Code.

The special exceptions should be separately recapitulated, and their existence should be distinctly denied seriatim. It is not sufficient generally to deny the existence of an exception.—Calcutta High Court. Circular, March 11th, 1863.

Charge may contain one or more heads.

238. The charge may contain one or more heads.

Ss. 240, 241, 242 declare when separate heads of a charge should be prepared.

Heads of charge.

239. When a charge contains one head only, the form shall be as follows, or to the same effect :—

(a).—I, A [*name and Office of Magistrate, &c.*,] declare that there is hereby made against Z the charge—

On Section 121.

(b).—That he, on or about the day of at , waged war against the Queen, and that he has thereby committed an offence punishable under Section 121 of the Indian Penal Code, *(c)* and within the cognizance of the Court of Session.

(d).—And I hereby direct that Z be tried by the said Court on the said charge.

[*Signature and Seal of the Magistrate.*]

To be substituted for *(b)*.

On Section 124.

(2). That he, on or about the day of at , with the intention of inducing the Honorable A. B., a Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and that he has thereby committed an offence punishable under Section 124 of the Indian Penal Code, and within the cognizance of the Court of Session.

On Section 161.

(3). That he, being a public servant in the Department, directly accepted from [*state the name*] for another party [*state the name*] a gratification, other than legal remuneration, as a motive for his, the said Z's, forbearing to do an official act, and that he has thereby committed an offence punishable under Section 161 of the Indian Penal Code, and within the cognizance of the Court of Session.

(4). That he, on or about the day of at , committed culpable homicide not amounting to murder, causing the death of , and that he has thereby committed an offence punishable under Section 304 of the Indian Penal Code, and within the cognizance of the Court of Session.

On Section 304.

(5). That he, on or about the day of at , abetted the commission of suicide by A. B., a person in a state of intoxication, and that he has thereby committed an offence punishable under Section 306 of the Indian Penal Code, and within the cognizance of the Court of Session.

On Section 306.

(6). That he, on or about the day of at , voluntarily caused grievous hurt to , and that he has thereby committed an offence punishable under Section 325 of the Indian Penal Code, and within the congnizance of the Court of Session.

On Section 325.

(7). That he, on or about the day of at , committed robbery, and that he has thereby committed an offence punishable under Section 392 of the Indian Penal Code, and within the cognizance of the Court of Session.

On Section 392.

(8). That he, on or about the day of at , committed dacoity, and that he has thereby committed an offence punishable under Section 395 of the Indian Penal Code, and within the cognizance of the Court of Session.

On Section 395.

And the same form shall be followed, as nearly as may be, in charges with one head only, under other Sections of the Indian Penal Code.

Charges in cases falling within two or more Sections of the Penal Code.

240. When it appears to the Magistrate that the facts which can be established in evidence show a case falling within two or more Sections of the Indian Penal Code, the charge shall contain two or more heads, each of which shall be applicable to one of such Sections.

Two or more offences punishable under the same Section.

241. When it appears to the Magistrate that the facts which can be established in evidence show the commission of two or more offences falling within the same Section of the Indian Penal Code, the charge shall contain two or more heads charging such offences respectively.

Thus a charge under S. 193, Penal Code, might be for intentionally giving or fabricating false evidence. If it be intended to charge a prisoner with both offences, they should be formed into two heads of the charge.

So also if the acts be distinct. Thus, hurt caused to three persons by three distinct acts, should be charged in three heads of the charge.—5 W. R., 4 C. L.

Cases of doubt as to the Section which is applicable, or the offence which may be proved.

242. When it appears to the Magistrate that the facts which can be established in evidence show a case falling within some one of two or more Sections of the Indian Penal Code, but it is doubtful which of such Sections will be applicable, or show the commission of one of two or more offences falling within the same Section of the said Code, but it is doubtful which of such offences will be proved, the charge shall contain two or more heads, framed respectively under each of such Sections, or charging respectively each of such offences accordingly.

Thus, it may be doubtful in a case whether the evidence will be sufficient to convict a prisoner of murder or culpable homicide not amounting to murder; robbery, or dishonestly receiving stolen property. In each of these cases, the charge should contain two heads.

Forms of charge of more than one head.

243. When a charge contains more heads than one, the form shall be as follows, or to the same effect :—

I, A [*name and office of Magistrate or other Officer as aforesaid, &c.,*] declare that there is hereby made against Z the charge :

On Sections 241 and 242.

First :—That he, on or about the day of at , knowing a coin to be counterfeit, delivered the same to another person, by name A. B., as genuine, and that he has thereby committed an offence punishable under Section 241 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly :—That he, on or about the day of at , knowing a coin to be counterfeit, attempted to induce another person, by name A. B., to receive it as genuine, and that he has thereby committed an offence punishable under Section 242 of the Indian Penal Code, and within the cognizance of the Court of Session.

And I hereby direct that Z be tried by the said Court on the said charge.

[*Signature and Seal of the Magistrate.*]

On Sections 302 and 304.

First :—That he, on or about the day of at , committed murder by causing the death of , and that he has thereby committed an offence punishable under Section 302 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly :—That he, on or about the day of at , by causing the death of , committed culpable homicide, and that he has thereby committed an offence punishable under Section 304 of the Indian Penal Code, and within the cognizance of the Court of Session.

On Sections 389 and 372.

First :—That he, on or about the day of at , committed theft, and that he has thereby committed an offence punishable under Section 379 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly :—That he, on or about the day of at , committed theft, having made preparation for causing death to a person, in order to the committing of such theft, and that he has thereby committed an offence punishable under Section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

Thirdly :—That he, on or about the day of at , committed theft, having made preparation for causing restraint to a person, in order to the effecting of his escape after the committing of such theft, and that he has thereby committed an offence punishable under Section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

Fourthly :—That he, on or about the day of at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and that he has thereby committed an offence punishable under Section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

And the same form shall be followed, as nearly as may be, in charges with more heads than one, under other Sections of the Indian Penal Code.

Amendment of charge.

244. It shall be competent to any Court before which a trial is held, at any stage of the trial, to amend or alter the charge.

"*Any Court.*" This would include not only a Court of Session, to which a commitment may have been made, but that of a Magistrate acting under S. 250.

Sessions Judges should not try persons on defective charges. They should rather exercise the power conferred on them by S. 244, and amend such charges.—Calcutta High Court Circular, March 11th, 1863.

Where the Magistrate in one charge charged the prisoners with having committed five offences under the same Section of the Penal Code, the Calcutta High Court remarked that this deficiency might be remedied by the Sessions Judge under S. 244, but the Court added that the Sessions Judge should consider how far it will be desirable to have all five offences tried together: and if he should consider that this will not be desirable, then his best course will be to try the prisoners under the present charge for one of the offences, and to direct the Magistrate to send in fresh charges in each of the other cases, which he can do without taking fresh depositions.—Kaaram Singh, 7 W. R., 8.

Whenever a Sessions Judge may see cause, under S. 244, to amend a charge, the reasons for such amendment, or, at all events, a statement that such has been found to be necessary, should form part of the record.—1 Agra, 67. If a charge be amended or altered by a Sessions Judge, the formalties prescribed by S. 362 should be observed.—3 *Id.*, 29. Until a trial before a Court of Session has been terminated by the delivery of the verdict by a Jury or Assessors, or before a Magistrate by the formal recording of the finding and sentence, even though all the evidence may have been taken, the power which a Court possesses under S. 244, Criminal Procedure, may be exercised. In all trials, however, any amendment or alteration of the charge will be subject to the due observance of Ss. 245, 246, and 247.—*Id.* Cir. 16, 1864.

Instead of altering a charge, the proper course is to frame an additional charge when it is necessary, letting the original charge stand, and taking a verdict of acquittal on it.—8 W. R., 12 C. L.

When the trial may be immediately proceeded with after amendment.

245. If the amendment or alteration is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused person in his defence, it shall be at the discretion of the Court, after making the amendment or alteration, to proceed with the trial as if the amended charge had been the original charge.

When a new trial may be ordered, or trial suspended.

246. If the amendment or alteration is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused person in his defence, the Court may either direct a new trial, or suspend the trial for such period as may be necessary to enable the accused person to make his defence to the amended or altered charge; and, after hearing his defence, may further adjourn the trial, to admit of the appearance of any witness whose evidence the Court may consider to be material to the case, or whom the accused person may wish to be summoned in his defence.

Defendant may re-call and examine witnesses already examined.

247. In all cases of amendment or alteration of a charge, the accused person shall be allowed to re-call and examine any witness who may have been examined.

CHAPTER XIV.—Ss. 248—256.

Of Cases triable by the Magistrate in which a Warrant on Complaint may issue.

Cases in which Magistrate may issue a warrant.

248. When a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected to have committed, any offence triable by such Magistrate, and punishable under the Indian Penal Code with imprisonment for a period exceeding six months, it shall be lawful for such Magistrate to issue his warrant to apprehend such person.

Summons instead of warrant.

Provided that in any such case the Magistrate, to whom such complaint shall be made, may, for any sufficient reason, instead of issuing his warrant in the first instance, issue his summons, requiring the person complained against to appear to answer to such complaint.

Chapter XIV. applies to trials regarding offences punishable under any local or special law, as well as under the Indian Penal Code, with imprisonment for a period exceeding six months, unless such are specially provided for.—See S. 21.

For the rules relating to the issue and service of a summons, see Ss. 69—74: for those relating to the issue and execution of a warrant of arrest, see Ss. 76—99.

Issue of process, &c.

249. The provisions of Chapter XII., relating to the issuing of process for causing the attendance* of the accused person, the taking of bail,† the summoning‡ and enforcing§ the attendance of witnesses, the examination‖ of parties and witnesses, the mode of recording¶ evidence, correction, attestation,[1] and interpretation[2] thereof, and the adjournment[3] of a case, shall be applicable to cases tried under this Chapter. On completing the examination of a witness under this Section, the Magistrate, in addition to the memorandum[4] required by Chapter XII., shall record such remarks as he may think material respecting the demeanor of any witness while under examination.

* Ss. 181—185, 201, 206.
† Ss. 181, 212, 221.
‡ Ss. 186, 187, 201.
§ Ss. 188—191.
‖ Ss. 192, 193, 202—205, 208.
¶ Ss. 194—198.
1 S. 199.
2 S. 200.
3 S 224.
4 S. 195.

Ss. 207, 227, 228, do not apply to *trials* before Magistrates.—Agra Sudder Court, Circular 25, 1865.

Charge.

250. When the evidence of the complainant and of the witnesses for the prosecution, and such examination of the accused person as the

Magistrate shall consider necessary, have been taken, the Magistrate, if he find that no offence has been proved against the accused person, shall discharge him. If the Magistrate find that an offence is apparently proved against the accused person which falls within the definition in a certain Section of the Indian Penal Code, or within one or other of the definitions in several Sections of the said Code, he shall prepare in writing a charge against the accused person in the manner prescribed in Chapter XIII.* of this Act, all the provisions of which shall be applicable to charges prepared under this Section. In charges prepared under this Section the words "within my cognizance" shall be substituted for the words "within the cognizance of the Court of Session" at the end of the charge, and the words "by the said Court" omitted in the order.

* Ss. 233—247.

Under S. 55 "a person who has once been tried for an offence, and convicted or acquitted of such offence, shall not be liable to be tried again for such offence." An order of discharge under S. 250 has been held by the Calcutta High Court not to amount to an acquittal, and as such to bar further proceedings.—3 W. R., 21, 22, C. L. In Reg. *v.* Sheriff (6 W. R., 13), the Court remarked that "this discharge (*i. e.*, under S. 250) is not an acquittal: it leaves the person discharged liable to be again charged at any time if fresh evidence should turn up, or other circumstance should render such a course proper."

"The Section (250) provides that if a Magistrate thinks the offence apparently proved, he is to draw up a charge."

"By S. 251 the charge is to be read over to the accused, and he is to be called on to make his defence to it: upon this the trial is to proceed regularly; and if the Magistrate finds the accused not guilty, he is to record a judgment of acquittal."

"In the present case no charge in writing was drawn up, as provided in S. 250. The prisoner was not asked whether he was guilty, or had any defence to make under S. 257."

"The Assistant Commissioner could, therefore, only *discharge* him under S. 250, and not *acquit* him under S. 255."

It would, therefore, seem as if the proceedings previous to the drawing up of a charge are regarded more as a preliminary enquiry, such as is held under Chapter XII., than as a trial; and that it is the drawing up of a formal charge which gives the proceedings the character of a trial.

As to whether a Magistrate may of his own motion, and without reference to higher authority, re-open a case in which the accused person has been discharged under S. 250, was determined by the Calcutta High Court by their Order, 804, dated 15th August 1865, (3 W. R., 21 C. L.) The question then raised was whether, under the terms of S. 434, which declares that "it shall not be lawful for any other Court than the Sudder Court to alter any sentence or order of any Subordinate Court, except upon appeal by the parties concerned, duly made," any further action on the part of a Magistrate was not barred, and the Court then held that a discharge was not a final order, to which allusion is made by S. 434, and that a Magistrate is not precluded from ordering the trial of a party discharged.

The observations of the same Court, in the Case of Tilkoo Goalla (8 W. R., 61), though they refer to an order of discharge under S. 225, that is in a preliminary enquiry regarding an offence triable by a Court of Session, would apply also to the case of a discharge under S. 250.—See Note to S. 225, *ante*. The Rule laid down by the Calcutta High Court seems also to have been ordered by the Judicial Commissioner of the Punjab [4018, August 29,

CH. XIV. Ss. 251 & 252.

1862]; but the Agra Sudder Court has held that when an offence triable jointly by a Magistrate and by a Sessions Court is tried by the former under Chapter XIV., and after the entire evidence for the prosecution and defence has been recorded, the Magistrate discharges the accused, holding that there is no proof to put him on his formal defence, another Magistrate cannot take up the case, on the ground that the investigation has been defective. The Court held that the order of the Magistrate after enquiry amounted to a verdict of not guilty.— 4 Agra, 189.

A Magistrate is not competent to discharge an accused person without taking the evidence of the witnesses for the prosecution who are named in the petition of complaint.—(Denonath Gope *vs.* Saroda Mookhopadya, 7 W. R., 47). He is bound to examine the witnesses for the prosecution, and was held to have acted illegally in discharging an accused person after having merely recorded the deposition of the prosecutor, and the defence.—Reg. v. Sheikh Edoo, 2 W. R., 47.

It is contrary to law to prepare a charge against a person when there is no evidence to support it.—3 Agra, 14.

Any examination of an accused person, which may have been taken under S. 202, before the preparation of a charge, will not dispense with the necessity of putting him on his defence after the charge has been prepared.—3 Agra, 156.

The non-attendance of the complainant on the day of the trial of a case under Chapter XIV., does not put an end to the case; the examination of the witnesses may proceed if the Magistrate should think it necessary to prosecute the enquiry; if the evidence of the complainant is considered essential, the Magistrate can summon him at any time for examination. If, on the other hand, the Magistrate should think it unnecessary to carry on the enquiry in the absence of the complainant, he may discharge the accused person.—8 W. R., 12 C. L. In the case of Jadoo Paharee (1 W. R., 25), the Calcutta High Court held that a complaint of an offence triable under Chapter XIV. could not be dismissed, merely because the complainant was not present. And this rule has been followed by the Madras High Court.

A charge of an offence triable under Chapter XIV. cannot be withdrawn. If made, it must be dealt with as provided in that Chapter.—7 W. R., 1 C. L.

It must be borne in mind that for the trial by a Magistrate of petty offences, that is, of offences punishable with imprisonment for a period not exceeding six months, a different and more summary procedure is laid down by Chapter XV., to which S. 250 does not apply.—See Reg. v. Chunder Coomar, S. 5, W. R., 4.

251. The charge shall then be read to the accused person, and he shall be asked whether he is guilty, or has any defence to make.

Plea.

252. If the accused person have any defence to make to the charge, he shall be called upon to enter upon the same, and to produce his witnesses if in attendance, and shall be allowed to re-call and cross-examine the witnesses for the prosecution.

Plea of claim to be tried.

It will be well, in connection with this Section, to note S. 432, which declares "that every person charged before any Criminal Court with an offence may of right be defended by Counsel or authorized agent."

This has, however, been qualified by Act XX. of 1865, S. 40, which requires "the permission of the presiding Judge or Magistrate" if the authorized agent be not a Pleader or Mookhtar duly qualified under that Act; and it further declares that "no person so appearing, pleading, acting, or assisting, shall be entitled to recover any fee or reward therefor."

Any examination of an accused person which may have been made before the preparation of a charge, will not dispense with the necessity for putting him on his defence after the charge has been prepared.—3 Agra, 156. A Magistrate is bound to file with the record any explanation or written

statement that an accused person may wish to make.—Kishto Chunder Ghose, 2 W. R., 58.

253. The Magistrate shall summon any witness and examine any evidence that may be offered in behalf of the accused person, to answer or disprove the evidence against him, and may, for this purpose, at his discretion, adjourn the trial from time to to time, as may be necessary.

Evidence for the defence.

The provisions of the Code relating to the adjournment of a case under this Chapter [See S. 249] are contained in S. 224, by which it is enacted that the term of adjournment shall not exceed fifteen days.

A Magistrate trying a case under Chapter XIV. [Criminal Procedure] is bound to summon witnesses cited for the defence.—3 Agra, 107; 2 *Id.*, 215; Abdool Setor, 3 W. R., 36; Kali Thakoor, 5 W. R., 65.

A Magistrate, however, is not bound to issue warrants on witnesses who have been summoned, and have neglected to attend, unless there is some proof of the summons having been duly served.—Abdoor Ruhman, 7 W. R., 37.

254. The provisions of Sections 187, 188, 189, 190, 191, and 192 of this Act shall be applicable to witnesses named in support of the defence.

Witnesses for the defence.

An accused person in a case tried by a Magistrate is entitled to have examined the witnesses cited by him. The Calcutta High Court annulled a sentence in which such an examination had not been taken, and directed the Magistrate to act accordingly and pass a proper order.—Abdool Setor, 3 W. R., 36. See Note to S. 253.

255. If the Magistrate shall find the accused person not guilty, he shall record judgment of acquittal. If the accused person is convicted, the Magistrate shall pass sentence upon him according to law.

Acquittal or conviction.

Section 381 declares that—

"When the trial in any Criminal Court is concluded, the Court, in passing judgment, if the accused be convicted, shall distinctly specify the offence of which, and the Section of the Indian Penal Code under which, he is convicted, or, if it be doubtful under which of two Sections the offence falls, shall distinctly express the same, and pass judgment in the alternative, according to S. 72 of the said Code." For the form of finding, see S. 381.

By S. 429, it is enacted that—

"Every sentence or final order of a Criminal Court, together with the reasons for making or passing the same, shall be written in the vernacular language of the presiding Officer, and shall be dated and signed by such officer at the time of his making or passing the same, and the original shall be filed with the record of proceedings, and a translation thereof, where the original is recorded in a different language from that in ordinary use in proceedings before such officer, shall be incorporated in the sentence or order."

And S. 430 provides that—"If the vernacular language of the presiding officer be not English, and the officer be sufficiently conversant with the English language to be able to write the sentence or final order in a clear and intelligible manner in that language, and prefer to write the same in that language, the sentence or final order may be written in English."

A Magistrate convicted and sentenced a child to imprisonment in a Reformatory under S. 433, but, finding that this sentence could not be carried out, he passed a fresh sentence of imprisonment in the ordinary Jail. The Bombay High Court annulled this sentence as illegal, and directed a fresh sentence to be passed, holding that a Magistrate has no power to reverse or alter his own sentence, when it has been formally recorded, the power being vested by S. 434 only in the High Court.—Tookia, 1 Bombay, 3. A Criminal Court has not the power to quash its own conviction though illegal (Ganowree Bhooya, 6 W. R., 70), nor to review its own judgment after it has been recorded, though, if the attention of a Court be called to any matter showing that there is an error or mistake in the judgment pronounced, it may correct such error or mistake, and it may also correct clerical errors in a judgment after it has been recorded, but it has no power to alter its conclusion either upon the facts or upon the law.—Godai Raout, 5 W. R., 61. There is, however, an exception to this rule, see S. 164, which permits the discharge of the offender or the remission of his punishment, on his submission to the order or requisition of the Court, for refusing or omitting to comply with which he has been punished or committed for trial.

How the Magistrate is to proceed when after commencement of trial, he finds the case beyond his jurisdiction.

256. In any trial before a Magistrate, in which it may appear at any stage of the proceedings that from any cause the case is one which the Magistrate is not competent to try, or which, in the opinion of such Magistrate, ought to be tried by the Court of Session, the Magistrate shall stop further proceedings under this Chapter, and shall proceed in accordance with Chapter XII. of this Act for conducting the preliminary enquiry in cases triable by the Court of Session.

In a case triable by a Magistrate or by the Court of Session, the accused person should be committed for trial only when a Magistrate finds, from aggravated circumstances, that higher punishment is required than he can award.—Calcutta High Court, Cir. 5, 1865.

When several persons are charged with offences of various degrees, arising out of one act or transaction, all implicated therein, against whom sufficient evidence is forthcoming, should be committed to the Court of Session, if an offence beyond the cognizance of a Magistrate, or one, which, in the opinion of the Magistrate having jurisdiction in the case, ought to be tried by a Court of Session, be chargeable against *any* of the accused.—Agra Sudder Court, Cir. 64, 1862; also Calcutta High Court Cir., May 19th, 1862.

Where the evidence shewed that an offence beyond the jurisdiction of the Magistrate had been committed, the Calcutta High Court set aside the conviction for a lesser offence, remarking that Magistrates are not at liberty to pass over material parts of the evidence in cases before them, and so to withdraw cases from the cognizance of the proper tribunals.—Ramtahal Singh, 5 W. R., 65.

A having charged *B* with grievous hurt, and *B* having charged *A* with hurt, because the former offence could (at that time) be tried only by a Court of Session, it was not necessary that the Magistrate should also commit the latter case for trial, since he is himself competent to decide it.—3 W. R., 10 C. L.

When an Act declares that certain offences shall be punishable by a Magistrate. but is silent regarding the jurisdiction over other offences, the Bombay High Court has held that they were beyond the jurisdiction of the Magistrate, and cognizable solely by the Court of Session.—Atmaram Waman Bhandakar, 3 Bombay, 6. *Crown Cases;* see also Lukshman Balaji, Ibid 10.

Of Cases triable by the Magistrate in which a Summons on Complaint shall ordinarily issue.

Summons shall issue

257. Whenever a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected to have committed, any offence triable by such Magistrate, and punishable under the Indian Penal Code with imprisonment for a period not exceeding six months, it shall be lawful for such Magistrate to issue his summons directed to such person, stating shortly the matter of such complaint, and requiring him to appear at a certain time and place before such Magistrate to answer to the complaint. Provided that,

When warrant may issue.

if the Magistrate shall be satisfied, or have reason to believe that the accused person is about to abscond, he may, instead of issuing a summons, issue his warrant in the first instance for the arrest of such accused person.

Chapter XV. applies to trials regarding offences punishable under any local or special law, as well as under the Indian Penal Code, with imprisonment for a period not exceeding six months, unless otherwise specially provided — See S. 21. There is no provision made for the trial of persons charged with offences punishable only with fine, but such cases are tried under Chapter XV.

For the rules regarding the issue and service of a summons, see Ss 69—74. For those regarding the issue and execution of a warrant of arrest, see Ss. 76—99.

Because a Magistrate improperly proceeded in the first instance against an accused person by warrant, instead of by summons, the interference of the Superior Court cannot be exercised, as S. 426, Criminal Procedure, declares that no sentence passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision, on account of any error or defect in the proceedings on trail, unless the accused person shall have been sentenced to a larger amount of punishment than could be awarded for the offence of which, in the judgment of the Appellate Court, the accused person ought, upon the evidence, to have been found guilty, or unless, in the judgment of the Appellate Court, the accused shall have been prejudiced by such error or defect —Aneef Putnee, 1 W R., 16.

Defendant may be admitted to bail or allowed to be at large upon personal recognizance

258. If, upon the day appointed, the accused person shall appear voluntarily in obedience to the summons in that behalf served upon him, or shall be brought before the Magistrate by virtue of a warrant, it shall be at the discretion of the Magistrate to admit the accused person to bail, or allow him to be at large upon his personal recognizance, as the Magistrate may

direct. If the accused person cannot give bail when required to do so, he shall be committed to custody.

Compare Ss. 212, 213.

Non-appearance of complainant.

259. If, upon the day appointed for the appearance of the accused person, or any day subsequent thereto on which the case may be called on, the complainant does not appear, the Magistrate small dismiss the complaint, unless for some reason he shall think proper to adjourn the hearing of the same to some other day, upon such terms as he shall think fit.

A complaint once under trial and dismissed in accordance with the terms of S. 259, should not be revived (Calcutta High Court, 461, 1864), unless there be some irregularity in the proceedings, such as the holding of the Court in a place not that entered in the summons.—Lukhim Mollo, 5 W. R., 51.

The Magistrate of the District cannot order a Magistrate exercising full powers to try a case dismissed on default under S. 259.—Calcutta High Court, 833, 1863.

The complainant has no right of appeal against an order dismissing his complaint.—Lyall & Co. *vs.* Sham Mundul, Suth. Rep., 1864, p. 23.

"Upon such terms as he shall think fit." These words evidently refer to the requiring of costs to be paid to the opposite party as a condition for the adjournment of a case, when that adjournment is caused by the laches of the complainant.

If summons be not obeyed, warrant.

260. If the person served with a summons shall not appear before the Magistrate at the time mentioned in such summons, and the Magistrate shall be satisfied that such summons was duly served in what shall be deemed by the Magistrate to be a reasonable time before the time therein appointed for appearing to the same, or if it shall appear to the Magistrate that, after due diligence, the summons could not be served according to the provisions of this Act, the Magistrate may issue his warrant to apprehend the accused person.

"Duly served." The following are the rules for the service of a summons on an accused person:—"A summons shall be served on the accused personally; or, in case the accused shall not be found, it may be left for him with some adult male member of his family residing with him."—S. 71. "When the accused cannot be found, and there is no adult male member of his family on whom the service can be made, the serving officer shall fix a copy of the summons on some conspicuous part of the house in which the accused ordinarily resides."—S. 72.

If an accused person abscond or conceal himself, so that upon the warrant issued against him, he cannot be found, the Magistrate cannot, in cases tried under Chapter XV., proceed under S. 183, as the provisions of that Section are not extended to the trial of such petty cases. The only course to be taken is for the Magistrate to issue a fresh warrant.—Muddon Mohun Podar, 3 W. R., 34; 3 W. R., 2 C. L.

261. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of the person complained against, and permit him to appear by an Agent duly authorized to act in his behalf. Provided that it shall be at the discretion of the Magistrate at any stage of the proceedings to direct the personal attendance of such person. When the personal attendance of the accused person during the trial has been dispensed with, the sentence of the Magistrate, if the sentence be for fine only, may be pronounced in the presence of the Agent, if the accused person has been permitted to appear by Agent, or the accused person may be required to attend to hear such sentence.

Magistrate may dispense with personal attendance of accused.

There is no appeal against the order of a Magistrate refusing to dispense with the personal attendance of the accused person.—Calcutta High Court, 567, 1862.

S. 432 declares that "every person charged before any Criminal Court with an offence may of right be defended by Counsel or authorised Agent." This has been qualified by Act XX. of 1865, S. 40, which requires "the permission of the presiding Judge or Magistrate" if the authorised Agent be not a Pleader or Mooktar duly qualified under that Act; and it further declares that "no person so appearing, pleading, acting, or assisting, shall be entitled to recover any fee or reward therefor."

262. If it appear to the Magistrate that any person is likely to give material evidence on behalf of the complainant or the accused person, and that such person will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the hearing of such complaint, the Magistrate shall issue his summons to such person under his signature and seal, requiring him to appear at a time and place mentioned in the summons, to testify what he knows concerning the matter of the complaint.

Summons to witness to attend and give evidence.

Parties should ordinarily be left to bring their witnesses with them. A Magistrate should summon witnesses in cases under this Chapter, *only* when it appears that they are likely to give material evidence, and that they will not voluntarily appear. No diet allowance can be required for such witnesses, as the former law, Act VII. of 1846, has been repealed by Act XVII. of 1862, and there is now no law on the subject.—Calcutta High Court, 160, 1862. Where the accused person was a Police Constable, and the Magistrate refused the application of the complainant for a summons against his witnesses, the Calcutta High Court interfered, and, remarking that it was in just such a case that the Magistrate should have exercised its discretion vested in him by S. 262, ordered him to do so, and to proceed with the case.—*In re* Boidonath Bania, 9 W. R., 3.

263. It shall be at the discretion of the Magistrate, at any stage of the trial, to summon and examine any witness whose

Magistrate may summon necessary evidence.

evidence he may consider essential to the just decision of the case. The Magistrate may also examine as a witness any person in attendance, although not summoned as a witness.

Application of previous rules.

264. The provisions of Sections 187, 188, 189, 190, 191, and 192 shall be applicable to witnesses summoned according to the provisions of Sections 262 and 263 of this Act.

See also Ss. 69—74.

Admission by accused of truth of complaint.

265. On the appearance of both parties on the day fixed for the trial, the substance of the complaint shall be stated to the accused person, and he shall be asked if he has any cause to show why he should not be convicted. If the accused person admit the truth of the complaint, and show no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly.

The difference between the mode of trial prescribed for petty offences and for more serious offences, but within the jurisdiction of a Magistrate, (S. 250) should be noted.

The power of putting questions to an accused person (Ss. 202, 250) is not conferred on Magistrates in the trial of cases under Chapter XV.—Madras High Court, 1863.

Proceeding when no such admission is made.

266. If the accused person do not admit the truth of the complaint, the Magistrate shall proceed to hear the complainant and such witnesses as he may produce in support of his complaint, and also to hear the accused person and such witnesses as he shall produce in his defence.

An accused person may be allowed to bring his own witnesses, if he wishes to do so, or he may demand an adjournment of the trial for their production. In such a case, the Magistrate should grant a summons for the attendance of any witness who will not voluntarily appear, when it appears that he is likely to give material evidence for the accused person.—Calcutta High Court, 188, 1865.

Every person accused of an offence before any Criminal Court may of right be defended by Counsel or authorised agent.—S. 432. This has, however, been qualified by Act XX. of 1865, S. 40.—See note to S. 182.

How the evidence is to be recorded.

267. The Magistrate shall make a memorandum of the substance of the evidence of each witness, as the examination of the witness proceeds. The memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record. If the Magistrate shall be prevented from making a memorandum as above

required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record. The Magistrate shall record such remarks as he shall think material respecting the demeanor of any witness whilst under examination.

Ordinarily, in cases under this Chapter, the record of the evidence consists merely of a memorandum taken by the Magistrate of the substance of the evidence of each witness. A Magistrate is bound to "make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds;" this is not complied with by a mere statement that a witness deposes the same as the last.—Agra Sudder Court, Cir. 18, 1865; also Reg. *v.* Byha Wullud Soorjim, 1 Bombay, 91. The practice of preparing the memorandum of evidence from the recorded depositions of the witnesses after their examination is illegal.—Agra Sudder Court, Cir. 13, 1865. The Calcutta High Court (Cir., 30th March, 1864) has ordered that, when it may appear to a Magistrate that a witness is giving false evidence, so that Criminal proceedings are likely to be necessary, the Magistrate should take down at length the evidence of the particular witness. A full record of the evidence in the Vernacular is not necessary in order to a conviction for giving false evidence; but this precaution will serve to obviate any doubts regarding the accuracy of the Magistrate's brief note of the evidence, where the commitment rests wholly or mainly on that note.

Manner of recording evidence in certain cases.

268. In any case in which the Magistrate shall consider it necessary, it shall be competent to him, instead of taking down merely the substance of the evidence of any witness, to take down the evidence of the witness in the manner provided in Section 195, or in the manner provided by Section 196 of this Act, if within the jurisdiction of such Magistrate the Local Government shall have made an order as provided in that Section. In any such case the provisions of Sections 199 and 200 shall be applicable to the evidence so taken.

Adjournment.

269. Before or during the hearing of any complaint, it shall be lawful for the Magistrate to adjourn the hearing of the same to a day to be then appointed and stated in the presence and hearing of the party or parties; and if on the day to which such hearing or such further hearing shall have been so adjourned, the accused person shall not appear, the Magistrate may issue his warrant for the arrest of such person; and if the complainant shall not appear, the Magistrate may dismiss the complaint.

A complaint once dismissed should not be revived (Calcutta High Court, 461, 1864), unless there has been some irregularity in the proceedings, such as the holding of the Court in a place not specified in the summons.—Luckhim Mulloo, 5 W. R., 51.

CH XV. Ss. 270 & 271.

There is no appeal against an order dismissing a complaint.—Lyall and Co., *vs.* Sham Mundul, Suth. Rep., 1864, p. 23.

Magistrate may award amends in cases of frivolous and vexatious complaints.

270. In any case where the Magistrate shall dismiss the complaint as frivolous and vexatious, it shall be lawful for him, in his discretion, by his order of dismissal, to award that the complainant shall pay to the accused person such amends, not exceeding fifty Rupees, as to such Magistrate shall seem just and reasonable. The sum so awarded shall be recoverable by distress and sale of the moveable* property belonging to the complainant, which may be found within the jurisdiction of the Magistrate of the District,† and in default of such distress, by imprisonment in the Civil Jail, for any time not exceeding thirty days, unless such amends shall be sooner paid.

* S. 6.

† Ss. 14, 18.

A similar provision is made by S. 61 for the levy of fines.

There is a wide difference between the procedure necessary, when a person is charged with an offence under S. 211, Penal Code (making a false charge with intent to injure, &c.), and that laid down in S. 270, Code of Criminal Procedure. Under the latter by the order of dismissal, if his complaint were frivolous and vexatious, the complainant might be ordered to pay to the person against whom the charge was brought, such amends, not exceeding 50 Rupees, as the Magistrate might consider just and reasonable; but in order to make him liable to the penalty provided by S. 211, Penal Code, for a false complaint, it would be necessary to hold a regular trial.—Calcutta High Court, Cir. 19, 1863.

It is not necessary that any charge should be preferred before a person can be fined for making a frivolous or vexatious complaint. The Magistrate should simply call upon the complainant to show cause why he should not be fined.—Calcutta High Court, 672, 1863. A Subordinate Magistrate can award amends, but such order is not appealable, as it is not a conviction within the terms of S. 412.—*Id.* 904, 1863.

Amends cannot be awarded in a case of theft, since trials for theft do not fall under Chapter XV., that offence being punishable with imprisonment exceeding six months (Gogun Sen, 2 W. R., 57, *in re* Giridaum Ram, 3 W. R., 70; *in re* Faman Hosein, 6 W. R., 55; *in re* Abdool Meeah, 7 W. R., 40; Yellappa Bin Mudakappa, 1 Bombay, 181); nor in a case under S. 342, Penal Code, of wrongful confinement (*in re* Bahar Ali, 7 W. R., 11); nor in a case of housebreaking by night under S. 457, Penal Code.—*In re* Hubbee Noshyo, 7 W. R., 12.

The award of amends can in no case exceed 50 Rupees. Although several persons may have been frivolously charged, the complainant cannot be mulcted to the extent of 50 Rupees for each individual so accused.—Calcutta High Court, 894, 1864; Lalloo Singh, 8 W. R., 54. An award of amends is no ground for the abandonment of a prosecution under S. 211, Penal Code, for making a false complaint with intent to injure. But if a Magistrate thinks that by the fine imposed as amends, sufficient punishment has been awarded, he may, under S. 169, refuse leave to prosecute.—*Id.* 111, 1865.

Magistrate may permit withdrawal of the complaint.

271. If a complainant, at any time before a final order is passed in any case under this Chapter, shall satisfy the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may

permit such complainant to withdraw such complaint. A complaint withdrawn under this Section shall not again be entertained.

Withdrawals of complaints and compromises can be permitted only in cases tried under Chapter XV. A party may compound an offence which consists only of an act irrespective of the intention of an offender, and for which the injured person may bring a Civil action, *e. g.*, assault, illegal confinement, adultery (Exception S. 214, Penal Code), and such like: but if he once brings such an offence to the cognizance of the Criminal Courts, he cannot withdraw the charge.—1 W. R., 1 C. L. The Calcutta High Court has again (9 W. R., 3, 4, C. L.) pointed out that compromises under sanction of a Court can under S. 271 be allowed only in petty cases triable under Chapter XV., and regarding offences punishable with imprisonment not exceeding six months; and that S. 214, Penal Code, deals merely with a question of substantive law, and declares it to be an offence to compromise certain classes of offences not coming with the exception annexed thereto. A charge of adultery does not come within the provisions of Chapter XV. of the Code of Criminal Procedure, and therefore cannot be compromised in Court under S. 271 of that Code, though the parties may privately compromise such a case without thereby committing an offence, as the case falls within the Exception of S. 214, Penal Code. The question of what cases can be compromised under S. 271 Act XXV. of 1861, is on the other hand one of procedure. A compromise under this Section is a settlement of the case sanctioned by the Court, having the effect of barring all further proceedings, and, for obvious reasons, it is limited to those cases which involve petty cases only.

The Judicial Commissioner, Punjab, delivered the following opinion on the terms of S. 271:—"A charge of adultery does not fall under S. 271, as it is not an offence triable under Chapter XV., Criminal Procedure. It may, however, be compounded [S. 214, Penal Code, Illus. *d.*], that is settled out of Court, and the husband does not incur any legal penalty, if he receives hush-money from the adulterer. This is a part of the Code of substantive law. The Code of Criminal Procedure lays down in what cases a complaint *once preferred* may be withdrawn. The complainant can only do so by permission of the Court and on showing sufficient grounds. A Criminal Court is not lightly to be moved and converted into an engine of oppression. If a man launches his case, he stands the consequences of convicting his adversary, or being himself convicted of having made a false accusation. The Code has conveniently made the fact of a summons or warrant being issued the limitation of the power of withdrawal."

Acquittal or conviction.

272. If the Magistrate in any case tried under this Chapter, shall find the accused person not guilty, he shall record a judgment of acquittal. If the accused person is convicted, the Magistrate shall pass sentence upon him according to law.

"When the personal attendance of the accused person during the trial has been dispensed with, the sentence of the Magistrate, if that sentence be for fine only, may be pronounced in the presence of the agent, if the accused person has been permitted to appear by agent, or the accused person may be required to attend to hear such sentence."—S. 261.

"Every sentence or final order of a Criminal Court, together with the reasons for making or passing the same, shall be written in the vernacular language of the presiding Officer, and shall be dated and signed by such Officer at the time of his making or passing the same, and the original shall be filed with the record or proceedings, and a translation thereof, where the original is recorded in a different language from that in ordinary use in proceedings before such Officer, shall be incorporated in the record of the sentence or order."—S. 429.

CH. XVI. S. 273.

"If the vernacular language of the presiding Officer be not English, and the Officer be sufficiently conversant with the English language to be able to write the sentence or final order in a clear and intelligible manner in that language, and prefer to write the same in that language, the sentence or final order may be written in English."—S. 430.

"When the trial in any Criminal Court is concluded, the Court, in passing judgment, if the accused person be convicted, shall distinctly specify the offence of which, and the Section of the Indian Penal Code under which, he is convicted, or, if it be doubtful under which of two Sections the offence falls, shall distinctly express the same, and pass judgment in the alternative, according to S. 72 of the said Code."—S. 381.

S. 382 gives the following forms of findings applicable to trials under this Chapter of the Code of Criminal Procedure in which no formal charges need be prepared:—"The Court finds that Z has used Criminal force, and has thereby committed an offence punishable under S. 353 of the Indian Penal Code, and directs that the said Z be *(sentence)*." Or "the Court finds that the complaint of assault is not proved, acquits Z, and directs that he be discharged."

CHAPTER XVI.—Ss. 273—278.

Of Enquiries and Trials before the Subordinate Magistrates.

Reference of cases to Subordinate Magistrate.

273. Criminal cases brought before the Magistrate of the District* or a Magistrate in charge of a division of a District,* either on complaint preferred directly to such Magistrate, or on the report of a Police Officer, may be referred by such Magistrate to any Magistrate subordinate to him. The reference shall be for enquiry, or for trial if the offence be triable by such Subordinate Magistrate, or with a view to commitment to the Court of Session,† if such Magistrate is competent to commit to the Court of Session,† or with a view to commitment to the Supreme Court of Judicature ‡ if such Subordinate Magistrate is competent to commit to such Supreme Court.‡ Provided that nothing in this Section shall prevent any Subordinate Magistrate from entertaining, either on complaint preferred directly to such Magistrate, or on the report of a Police Officer (in cases in which the Subordinate Magistrate is authorized to receive such report), any case that such Magistrate is, by any law for the time being in force, competent to entertain.

* Ss. 14, 18.

† S. 13.

‡ High Court.

Proviso.

In connection with this Section read S. 180.

The Magistrate of the District, or Magistrate who is authorized to receive a complaint without reference from the Magistrate of the District [see S. 66], may at once make over the complaint to be enquired into or determined by any Magistrate subordinate to him, or he may, after examination of the complainant, order a summons or warrant to issue, and then direct the case to be

tried by any Magistrate subordinate to him, who may be competent to try it.—Calcutta High Court, Cir. 6, 1864.

Cases instituted by the Magistrate of the District, or a Magistrate in charge of a division of a District, under S. 68 (*i. e.*, without any complaint made) cannot be referred for decision to any Subordinate Magistrate, but must be heard by the Magistrate who took cognizance of the offence.—Calcutta High Court, 965, 1865.

The Agra Sudder Court [August 31st, 1863] has held that, if the case be referred for enquiry to a Subordinate Magistrate, he cannot try it, although he may have jurisdiction to do so. The Calcutta High Court [406, 1863] has declared that the main principle regarding the jurisdiction of Subordinate Magistrates laid down in Chapter XVI. is that no Subordinate Magistrate can legally record evidence in a case in which he is not competent to convict. Unless there are good *primâ facie* grounds for suspecting a case to be without foundation, and, as such, not worthy of a regular trial, it should not be referred to a Judicial Officer who is not competent to try it.

Cases how to be referred.

274. When a Criminal case is referred under this Chapter to a Subordinate Magistrate, the order of reference, if the case has been brought forward on the report of a Police Officer, shall be recorded on such report, and all processes issued for causing the attendance of the accused person or the witnesses, shall direct them to attend before such Court.

Subordinate Magistrates to follow the same rules of procedure as the Magistrate.

275. In the enquiry into or trial of cases under this Chapter, the Subordinate Magistrates shall be guided by the rules prescribed for the guidance of the Magistrate of the District* in similar cases; and Police Officers and others shall be bound to obey all orders and processes issued in such cases in like manner as if such orders or processes had been issued by the Magistrate of the District.*

* Ss. 14, 18.

The "rules" referred to here will be found in Chapters XII., XIV., XV.

How the Subordinate Magistrate is to proceed in cases beyond his jurisdiction.

276. If, in the course of a trial before a Subordinate Magistrate, the evidence shall appear to him to warrant a presumption that the accused person has been guilty of an offence which such Magistrate is not competent to try, or for which he is not competent to commit the accused person for trial before the Court of Session,† he shall stay proceedings, and shall submit the case to the Magistrate to whom he is subordinate. The Magistrate to whom the case is submitted shall either try the case himself, or refer it to any Officer subordinate to him having jurisdiction, or he may commit the accused person for trial before the Court of Session.† In any such case, such Magistrate or other

† S. 13.

CH. XVI. S. 277.

Officer as aforesaid shall examine the parties and witnesses, and shall proceed in all respects as if no proceedings had been held in any other Court.

"Shall submit the case to the Magistrate to whom he is subordinate." This would be the Magistrate of the District or the Magistrate in charge of the division of the District.—[See S. 273].

If the Subordinate Magistrate be, under S. 38, empowered to make commitments to the Court of Session, and the offence be triable by the Magistrate of the District *or* the Court of Session, he should refer it to the Magistrate of the District rather than hold a preliminary enquiry, and commit it to the Court of Session, since this latter procedure, though strictly legal, should as much as possible be avoided, as it tends unnecessarily to occupy the more valuable time of the Sessions Judge.—2 W. R., 19 C. L.

A Magistrate to whom a case is referred under S. 276 by a Subordinate Magistrate, who finds that he has no jurisdiction, cannot, upon perusal of the proceedings held by that Subordinate Magistrate, dismiss the charge. He must try the case, and if he finds that there is no legal proof, he must acquit.—Madras High Court.

In what cases Subordinate Magistrate shall not pass sentence, but may refer case to the Magistrate.

277. If in any case tried by a Subordinate Magistrate having jurisdiction, in which the accused person is found guilty, such Magistrate shall consider the offence established against the accused person to call for a more severe punishment than he is competent to adjudge, he shall record the finding and submit his proceedings to the Magistrate* to whom he is subordinate, and such Magistrate shall pass such sentence or order in the case as he may deem proper, and as shall be according to law. In any such case, the Magistrate to whom the proceedings are submitted, may examine the parties, and recall and examine any witness who shall already have given evidence in the case, and he may call for or take any further evidence.

* See note to S. 276.

How the Magistrate is to proceed in such cases.

In Districts and Provinces in which Act XV. of 1862 may be in force, if a case regarding an offence triable only by a Magistrate be referred under S. 277 of the Code of Criminal Procedure to the Magistrate of the District, that Officer will be limited to his ordinary jurisdiction; if, however, the offence be one triable jointly by the Magistrate or Sessions Judge, and a severer punishment than the Magistrate can award be thought necessary, the Magistrate of the District can act under Act XV, of 1862, but he must conduct the whole trial, that is, examine all the witnesses, and take the defence in his presence. If the case be one triable only by a Court of Session, a reference under S. 277 is illegal, a Subordinate Magistrate having no jurisdiction to record a finding of any sort in that class of case.—4 W. R., 12 C. L.

The prisoner whose case is under S. 277 submitted to a superior Magistrate, has a right to be present at the subsequent proceedings, and to be heard in his defence. Where this had been omitted, the proceedings before the Magistrate of the District were quashed, and he was directed to take up the case afresh.—*In re* Gonesh Sircar, 7 W. R., 38.

A Magistrate to whom a case has been referred under S. 277, may acquit the accused person, contrary to the finding of the Subordinate Magistrate.—Jud. Comr., Punjab, 1863.

The Magistrate of the District is not competent to pass sentence of whipping in a case referred to him under S. 277. The terms "call for a more severe punishment" refer to a greater amount of the *same kind* of punishment, and not to a wholly different species of punishment, in respect of which it cannot be said with certainty that it is either a more or less severe punishment.—8 W. R., 15 C. L. In Madras it would seem that a contrary practice is in force.—See note to S. 357.

An order issued by the Magistrate of the District, directing his Subordinate Magistrates to abstain from hearing cases within their jurisdiction, but which seemed to be likely to call for a more severe punishment than they could award, and to forward such cases at once to an Officer having jurisdiction to pass such sentence, was held by the Bombay High Court to be illegal.—Guna Bin Ragnak, 3 Bombay, 29, *Crown cases*.

Subordinate Magistrate, if empowered to do so, may, instead of convicting the accused, commit him for trial before the Court of Session.

278. Nothing in the last preceding Section shall be held to prevent the Subordinate Magistrate in any such case as is therein described, if such Magistrate is empowered* to hold the preliminary enquiry into cases triable by the Court of Session,† and to commit persons to take their trial before such Court, from committing the accused person for trial before the Court of Session instead of finding him guilty. If the Subordinate Magistrate shall be of opinion that the accused person should be committed for trial before the Court of Session,† he shall proceed in accordance with Chapter XII.‡ of this Act, for conducting the preliminary enquiry in cases triable by the Court of Session.†

Mode of procedure in such cases.

* S. 38.

† S. 13.

‡ Ss. 179—232.

A Magistrate of a District cannot cancel a commitment made by a duly empowered [S. 38] Subordinate Magistrate. The person committed can be delivered only by due course of law.—Madras High Court, 1864.

A charge of an offence triable by a Court of Session, or by the Magistrate of the District [see Schedule] having been preferred to a Subordinate Magistrate, who was not competent to hold the trial, but was vested with powers under S. 38 to hold a preliminary enquiry into cases triable by the Court of Session, the Calcutta High Court [299, 1865] held that that Officer should have referred it for trial to the Magistrate of the District [S. 276], instead of holding a preliminary enquiry, and committing it to the Court of Session; for the latter procedure, which was adopted by him, though strictly legal, should, as much as possible, be avoided, as it takes up unnecessarily the more valuable time of the Sessions Judge.

CHAPTER XVII.—S. 279.

PLACE WHERE PRELIMINARY INVESTIGATIONS AND TRIALS HELD, AN OPEN COURT.

Place where investigation made, an open Court.

279. The place in which the Court of a Magistrate is held for the trial of any complaint, or for the purpose of conducting any preliminary investigation into any case

CH. XVIII. S. 280.

triable by a Court of Session* or Supreme Court of Judicature,† or any Superior Court, shall be deemed an open and public Court to which the public generally may have access, so far as the same can conveniently contain them; but it shall be lawful for any such Court, if it shall think fit, to order that, during the investigation into any particular case triable by a Court of Session,* or by a Supreme Court of Judicature,† no person shall have access to or be or remain in such room or building without the consent or permission of the Court.

* S. 13.
† High Court.

A judicial investigation by a Magistrate into a Railway accident should be conducted at the nearest Railway Station to the scene of the accident.—Government of Bengal, 5156, September 8th, 1865.

CHAPTER XVIII.—Ss. 280—294.

Of Recognizance and Security to keep the Peace.

The Agra Sudder Court and the Judicial Commissioners of the Punjab and of the Central Provinces have ruled that the provisions of Chapter XVIII. apply to European British subjects. It would seem doubtful whether S. 280 would apply, since, although under 53 Geo. III. c. 105, S. 155, or Act VII. of 1853, a European British subject may be convicted by a Magistrate and Justice of the Peace of an assault, and it might, therefore, be held that there is nothing to prevent the further action of the Magistrate under S. 280, the absence of any special provision on the subject, and the fact that such provision is made by S. 282, for taking bail from a European British subject to keep the peace, would seem to indicate that the Legislature intended to exclude such persons from the operation of S. 280.

Personal recognizance to keep the peace in cases of conviction.

280. Whenever a person charged with rioting,‡ assault,§ or other breach‖ of the peace, or with abetting¶ the same, or with assembling[1] armed men, or taking other unlawful measures, with the evident intention of committing the same, shall be convicted of such charge before any Court of Session[2] or the Magistrate of the District,[3] or other Officer exercising the powers[4] of a Magistrate: and the Court or Magistrate or other Officer as aforesaid, by which the accused person is convicted, or the Court or Magistrate or other Officer as aforesaid by which the final sentence or order in the case shall be passed, shall be of opinion that it is just and necessary to require a penal recognizance for keeping the peace, from the person so convicted, it shall be lawful to such Court or Magistrate or other Officer as aforesaid so convicting the accused person, or so passing the final sentence or order as aforesaid, in addition, to direct

‡ S. 146, Penal Code.
§ S. 351, Penal Code.
‖ Chapter VIII. Penal Code.
¶ Ss. 107, 108, Penal Code.
1 S. 157, Penal Code.
2 S. 13.
3 Ss. 14, 18.
4 S. 16.

that the person so convicted be required to execute a formal engagement,* in a sum proportionate to his condition in life and the circumstances of the case, for keeping the peace during such period as it may appear proper to fix in each instance, not exceeding one year if the sentence or order be passed by the Magistrate of the District† or other Officer exercising the powers‡ of a Magistrate, or three years if the sentence or final order be passed by a Court of Session.§ When any accused person shall be convicted of any offence specified in this Section by an Officer not exercising the powers of a Magistrate, such Officer, if he consider it just and necessary to require a penal recognizance for keeping the peace from the person so convicted, shall report the case to the Magistrate of the District,† or other Officer exercising the powers‡ of a Magistrate to whom such Officer may be subordinate, who shall deal with the case as if the conviction had been before himself.

S. 281.

* S. 284, and D. Appendix.

† Ss. 14, 18. S. 16.

§ S. 13.

The different procedure laid down in this and in S. 282 should be noted. Under S. 280 a recognizance can be demanded from a person *convicted* of an offence against the public peace, without any further preliminary proceedings, the Criminal Court being satisfied from the facts on which the conviction has been recorded, that further security against a breach of the peace is necessary; whereas several formal proceedings are required by S. 282.

Under S. 280 a Magistrate is competent to bind over a person to keep the peace for one year from the date of his release from Jail on expiry of his sentence.—W. Don Dolloi, 6 W. R., 71.

The report of a Subordinate Magistrate should be made *forthwith* on the conviction of the person from whom it is contemplated to take a penal recognizance for keeping the peace. Where some delay took place, but the convict was called upon to show cause why he should not enter into a recognizance, the Madras High Court held that the report of the Subordinate Magistrate might be treated as "credible information," within the meaning of S 282, and that the order requiring a recognizance was, therefore, not without jurisdiction.—Nellikel Edatthil Itti Pungy Achin, 2 Madras, 240. A conviction of Criminal trespass (S. 447, Penal Code), with a demand for penal recognizance to keep the peace is not illegal if the acts of the convict were such as to indicate an intention on his part to commit a breach of the peace. It is not absolutely necessary that the offence charged amounted to a breach of the peace.—Gendoo Khan, 7 W. R., 14.

Security to keep the Peace.

281. In cases in which it may appear necessary to require security‖ for keeping the peace, in addition to the personal‖ recognizance of the party so convicted, it shall also be lawful to the Court or Magistrate or other Officer as aforesaid, empowered to require a penal recognizance under the last preceding Section, to require security in addition thereto, and to fix the amount of the security-bond to be executed by the surety or sureties;

‖ Form D. Appendix.

CH. XVIII. S. 282.

with a provision that, if the same be not given, the party required to find the security shall be kept in custody for any time not exceeding one year if the order be passed by the Magistrate of the District* or other Officer exercising the powers† of a Magistrate, or three years if the order be passed by the Sudder‡ Court or by a Court of Session.§

* Ss. 14, 18.
† S. 16.
‡ S. 19.
§ S. 13.

The rules for the enforcement of the terms of the bond (Ss. 293, 294) are the same in both cases.

A Sessions Judge on appeal having reversed the order of a Magistrate convicting and sentencing a person under S. 155, Penal Code, the Calcutta High Court held that there were no longer any grounds for calling upon him to execute a recognizance. The order of the Magistrate demanding the same was, therefore, annulled as illegal.—Anund Chunder Chuckerbutty, 3 W. R., 33.

Cash cannot be accepted from a person required to find security to keep the peace.—Jud. Comr., Punjab, 1863.

The Calcutta High Court has, however, held otherwise.—See case of Krishtendro Roy, 7 W. R., 30.

Summons to any person to show cause why he should not enter into a bond to keep the Peace.

282. It shall be lawful for the Magistrate of the District‖ or other Officer exercising the powers¶ of a Magistrate, whenever he shall receive credible information that any person, whether a European British subject or not, is likely to commit a breach of the peace, or to do any act that may probably occasion a breach of the peace, to summon such person to attend at a time and place mentioned in the summons, to show cause why he should not be required to enter into a bond to keep the peace with or without sureties as such Magistrate shall think fit.

‖ Ss. 14, 18.
¶ S. 16.

The duties of a Superior Police Officer in cases of apprehended breach of the peace of a serious nature are thus laid down in Act V. of 1861, S. 17:—

"When it shall appear that any unlawful assembly or riot or disturbance of the peace has taken place, or may be reasonably apprehended, and that the Police force ordinarily employed for preserving the peace is not sufficient for its preservation, and for the protection of the inhabitants, and the security of the property in the place where such unlawful assembly, or riot, or disturbance of the peace has occurred, or is apprehended, it shall be lawful for any Police Officer, not below the rank of Inspector, to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such Police Officer may require, to act as Special Police Officers for such time and within such limits as he shall deem necessary; and the Magistrate, to whom such application is made shall, unless he see cause to the contrary, comply with the application."

S. 18 describes the duties of such Special Police Officers, and S. 19 prescribes the penalty for refusal to serve as such.

The law evidently does not require that the Magistrate proceeding against a European British subject under the foregoing and following Sections, should be a Justice of the Peace. It is requisite that he should be either the Magistrate of the District, or an Officer exercising the powers of a Magistrate.—(S. 16).

When a person appears before Magistrate, and swears that he is in fear of his life on account of the conduct of a person named, the Magistrate is com-

petent to consider such to be credible imformation within the terms of S. 282, and may act thereupon. (Tarinee Kant Lahory, 8 W. R., 79; Krishtendro Roy, 7 W. R., 30); but a mere petition, unsupported by any definite complaint or deposition on solemn affirmation, and which did not state that there was any probability of a breach of the peace, was held not to amount to "credible information."—Chamaro Malo, 8 W. R., 85.

The report of a Subordinate Magistrate is credible information, upon which the Magistrate of the District is competent to act.—Nellikel Edatthil Itti Pungy Achen, 2 Madras, 240; also the report of a Police Officer see S. 285.

There is nothing in the law which makes it imperative on a Magistrate to confront the complainant and the accused in a case under S. 282: it is only necessary that the latter should have an opportunity of clearing himself of the accusation.—Tarinee Kant Lahory, 8 W. R., 79.

It must appear, on the face of the Magistrate's order, that he has received credible information that the persons ordered to enter into their recognizances were likely to commit a breach of the peace, or to do an act that might probably occasion a breach of the peace.—Bereshurree Prashad, 6 W. R., 93.

Form of Summons.

283. The summons shall set forth the substance of the information, the amount of the bond, and the term* for which it is to be in force, and if security is called for, the number of sureties required, and the amount in which they are to be bound respectively. Such summons shall be served in the manner provided by this Act for the service of a summons on an accused person.

* See Ss. 289 290.

Penalty.

284. The penalty of such bond, which shall be in the form (D) given in the Appendix, or to the like effect, shall be fixed with a due regard to the circumstances of the case and the means of the party: and the amount in which the sureties shall be bound shall not exceed the said penalty.

Under Act XXVI. of 1867, Schedule B, Art. 1, Bail-Bonds when given by direction of any Court, are made subject to a Stamp-duty of 8 annas, but there is an exemption in favor of Bail-Bonds in Criminal cases, recognizances to prosecute, or give evidence, and personal recognizances for appearance or otherwise.

Warrant of arrest.

285. If the person summoned shall not attend on the day appointed, the Magistrate† or other Officer as aforesaid,† if satisfied that the summons has been duly served, may issue a warrant for his arrest. Provided that, whenever it shall appear to the Magistrate or other Officer as aforesaid, upon the report of a Police Officer, or upon other credible information, the substance of which report or information shall be recorded, that there is just reason to fear the commission of a breach of the peace, which may probably be prevented by the immediate arrest of any person, it shall be lawful for the Magistrate at any time to issue a warant for the arrest of such person.

† S. 282.

Magistrate may dispense with personal attendance of party informed against.

286. The Magistrate* or other Officer as aforesaid* may, if he see sufficient cause, dispense with the personal attendance of the person informed against, and permit him to appear and enter into the required security, or show cause against such requisition, by an agent duly authorized to act in his behalf.

* S. 282.

The Calcutta High Court (567, 1862) has held that there is no appeal against the order of a Magistrate refusing to dispense with the attendance of an accused person, and this would apply equally to the case of a person informed against. "Agent duly authorised to act."—See note to S. 432, *post.*

By S. 307 it is provided that any evidence taken under this Chapter "shall be taken in the manner prescribed by S. 267, subject to the provision contained in S. 268 of this Act."

S. 267 declares that "the Magistrate shall make a memorandum of the substance of the evidence of each witness, as the examination of the witness proceeds. The memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record. If the Magistrate shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record. The Magistrate shall record such remarks as he shall think material respecting the demeanor of any witness whilst under examination." S. 268 adds that "in any case in which the Magistrate shall consider it necessary, it shall be competent to him, instead of taking down merely the substance of the evidence of any witness, to take down the evidence of the witness in the manner provided in S. 195, or in the manner provided by S. 196 of this Act, if within the jurisdiction of such Magistrate the Local Government shall have made an order as provided in that Section. In any such case, the provisions of Ss. 199 and 200 shall be applicable to the evidence so taken."

Discharge of party informed against.

287. If, on the appearance of the person, or of his agent, if he is permitted to appear by agent, the Magistrate† or other Officer as aforesaid† shall not be satisfied that there is occasion to bind such person to keep the peace, he shall direct his discharge.

† S. 282.

Consequence of not complying with order of Magistrate to enter into a bond.

288. If the Magistrate‡ or other Officer as aforesaid‡ shall be satisfied that it is necessary for the preservation of the peace to take a bond from such person with or without security, he shall make an order accordingly; and if the person shall fail to comply with the order, it shall be lawful for the Magistrate‡ or other Officer as aforesaid‡ to commit him to Jail.

‡ S. 282.

The Calcutta High Court, in the case of Kristendro Roy (7 W. R., 30) held that it was not illegal for a Magistrate to take cash security, but this is opposed to the order of the Judicial Commissioner, Punjab.

For the term of confinement, and the conditions upon which release may be obtained, see following Section.

An order under S. 288 is not appealable. If it is contrary to law, the Judge should proceed under S. 434, and report the proceedings to the High Court.—Calcutta High Court, 1014, 1863.

289. The period for which the Magistrate* or other Officer as aforesaid* may bind a person to keep the peace with or without security, shall not exceed one year. When a person shall be committed to Jail under the last preceding Section, he shall not be detained by authority of the Magistrate* or order Officer as aforesaid* beyond the term of one year, and shall be released whenever he shall comply with the order within that term. * S. 282.

Limit for confinement.

A person committed to Jail in default of furnishing security should not be made to labor.

290. Whenever it shall appear to the Magistrate† or other officer as aforesaid† that it is necessary for the preservation of the peace to bind a person beyond the term of one year, he may, before the expiration of the first year, record his opinion to that effect, and the grounds thereof, and may refer the case for the orders of the Court of Session,‡ and such Court, after examining the proceedings of the Magistrate† or other Officer as aforesaid,† and making such further enquiry as such Court may think necessary, may, if it shall see cause, authorize the Magistrate† or other Officer as aforesaid† to extend the term for a further period not exceeding one year, and if the party shall fail to give a bond, with security if required, for his keeping the peace for such further period as the Magistrate† or other Officer as aforesaid shall direct under the orders of the Court of Session,‡ he may be kept in confinement for such further period, or until he shall give such bond within that period. † S. 282. ‡ S. 282.

Extension of period of confinement.

291. The Magistrate§ or other Officer as aforesaid§ may, if he shall see sufficient cause, discharge any recognizance and surety for keeping the peace taken under the preceding Sections, and may order the release of the person confined for default in entering into such recognizance or giving such security. § S. 282.

Discharge of recognizances.

292. A surety for the personal appearance of another person may at any time apply to the Magistrate‖ or other Officer as aforesaid,‖ to be ‖ S. 282.

Discharge of sureties.

CH. XVIII. Ss. 293 & 294.

relieved from his engagement as surety. On such application being made, the Magistrate shall issue his summons or warrant, in order that the person for whom such surety is bound, may appear or be brought before him. On the appearance of the person to such warrant, or on his voluntary surrender, the Magistrate or other Officer as aforesaid, shall direct the engagement of the surety to be cancelled, and shall call upon such person to give fresh security, and in default thereof shall commit him to custody.

Enforcement of penalty against the principal party.

293. Whenever it may be proved before the Magistrate* or other Officer as aforesaid* that any recognizance or other bond taken under this Chapter has been forfeited, he shall record the grounds of such proof, and shall call upon the person bound by the bond to pay the penalty thereof, or to show cause why it should not be paid; and if sufficient cause be not shown, and the penalty be not paid, the Magistrate* or other Officer as aforesaid* shall proceed to recover the same by the attachment and sale of any of the moveable† property belonging to the person bound thereby, which shall be found within the jurisdiction of the Magistrate‡ of the District, and if the penalty be not paid, and cannot be recovered by such attachment and sale, the party shall be liable to imprisonment by order of the Magistrate* or other Officer as aforesaid* in the Civil Jail for a period not exceeding six months.

* S. 282.

† S. 6.

† Ss. 14, 18.

Recovery of penalty from surety.

294. Whenever it may be proved before the Magistrate‡ or other Officer as aforesaid‡ that any bond with a surety has been forefeited, the Magistrate or other Officer as aforesaid may at his discretion give notice to the surety to pay the penalty to which he has thereby become liable, or to show cause why it should not be paid; and if no sufficient cause be shown, and the penalty be not paid, the Magistrate or other Officer as aforesaid may proceed to recover payment of the penalty from such surety in the same manner§ as from the principal party.

‡ S. 282.

§ S. 293.

CHAPTER XIX.—Ss. 295—307.

Security for Good Behaviour.

The Agra Sudder Court and the Judicial Commissioners of the Punjab and of the Central Provinces have ruled that this Chapter does not apply to European British subjects. S. 25, however, enacts that "no person whatever shall, by reason of place of birth, or by reason of descent, be exempt from the rules of Criminal Procedure contained in this Act. Provided that nothing in this Section shall be held to authorize the trial or commitment for trial before any Criminal Court of any person, who, in respect of the offence with which he was charged, is not subject to the jurisdiction of that Court." As matters cognizable under Chapter XIX. are not trials or commitments for trial, the reason for this exemption is not apparent. Ss. 295 & 296.

295. Whenever it shall appear to the Magistrate of the District* or to an Officer exercising the powers† of a Magistrate, that any person is lurking within his jurisdiction not having any ostensible means of subsistence, or who cannot give a satisfactory account of himself, it shall be competent to such Magistrate or other Officer as aforesaid to require security for the good behaviour of such person for a period not exceeding six months.

When Magistrate may require security for good behaviour for six months.

* Ss. 14, 18.

† S. 16.

A Police Officer is empowered by S. 101 to arrest without orders from a Magistrate persons described in the foregoing. Action taken under S. 295 should be quite irrespective of any proceedings on account of any offence committed.—1 W. R., 14 C. L.

A Sessions Judge after acquitting a person under trial before himself can, if he thinks proper, bring to the notice of the Magistrate his opinion that security for his good behaviour should be taken.—Byha Wullud Soorjim, 1 Bombay, 91. Security for good behaviour cannot be demanded from a person convicted of theft, who cannot be said to have been lurking within the jurisdiction of the Magistrate.—Kunee Sonar, 7 W. R., 57.

Orders passed by a Magistrate under S. 295 are appealable to the Court of Session.—See S. 409.

A Subordinate Magistrate has no jurisdiction over cases under Chapter XIX.—Madras High Court. Cash cannot be received as security for good behaviour.—Jud. Comr., Punjab, 1863.

296. Whenever it shall appear to such Magistrate‡ or other Officer as aforesaid‡ from the evidence as to general character adduced before him, that any person is by repute a robber, house-breaker, or thief, or a receiver of stolen property, knowing the same to have been stolen, or of notoriously bad livelihood, it shall be competent to such Magistrate‡ or other Officer as aforesaid‡ to require security for the good behaviour of such person for a period not exceeding one year.

When Magistrate may require security for good behaviour for one year.

‡ S. 295.

Action taken under S. 296 should be quite irrespective of any proceedings on account of any offence committed.—1 W. R., 14 C. L.

Where a Magistrate, after convicting and sentencing a person to imprisonment, had directed that he should be brought up at the expiration of his sentence to give security for good behaviour for one year under S. 296, the Bombay High Court annulled that order as illegal, but remarked that the prisoner might, after his discharge from imprisonment, be brought up and dealt with under that law.—Krishnaji Bapuji Gai kavad, 3 Bombay, 39. *Crown cases.*

Because a person is alleged to be in the habit of being security for persons called upon for security for good behaviour is not sufficient to justify a Magistrate to call upon him to furnish security.—5 Agra, 149.

A Magistrate cannot require security for good behaviour merely on the report of a Police Officer, as such report is not evidence.—Alum Sheikh, 5 W. R., 2.

Orders passed by a Magistrate under S. 296 are appealable to the Court of Session.—See S. 409.

297. Whenever it shall appear to such Magistrate* or other Officer as aforesaid* from the evidence as to general character adduced before him, that any person is by habit a robber, house-breaker, or thief, or a receiver of stolen property, knowing the same to have been stolen, or of a character so desperate and dangerous as to render his release, without security, at the expiration of the limited period of one year, hazardous to the community, the Magistrate* or other Officer as aforesaid* shall record his opinion to that effect, with an order specifying the amount of security which should, in his judgment, be required from such person, as well as the number of sureties, and the period, not exceeding three years, for which the sureties should be responsible for such person's good behaviour.

* S. 295.

How to proceed in cases beyond one year.

By Ss. 400, 401, Penal Code, the belonging to a gang of persons associated for the purpose of dacoity, theft, or robbery is made a punishable offence, and by S. 413, habitually receiving or dealing in stolen property, is provided for.

The Calcutta High Court, after acquitting a person, convicted by the Sessions Judge of an attempt to commit murder [S. 307, Penal Code], directed the Magistrate to take security from him, as the Court considered that he was of a character so desperate and dangerous as to make his release without security hazardous to the community.—Beharee *alias* Kureem Bux, 3 W. R., 23.

Security under S. 297 should not be taken from persons who only appear to be of violent or turbulent characters.—Narain Soobachee, 6 W. R., 6.

The warrant of the Magistrate under S. 297 should direct the prisoner to be detained until receipt of the orders of the Sessions Court, with a proviso that such detention should not exceed three years.—9 W. R., 1 C. L.

298. If the person required to furnish security, as provided in the last preceding Section, shall not furnish the security so required, the proceedings shall be laid, as soon as

Case to be laid before the Court of Session.

conveniently may be, before the Court of Session,* which, after examining them, and requiring any further information or evidence which it may judge necessary, shall be competent to pass orders on the case, either confirming, modifying, or annulling the orders of the Magistrate† or other Officer as aforesaid† as it may judge proper.

* S. 13.

† S. 295.

There is no appeal from the order passed by a Sessions Judge under S. 298 —3 Agra, 108. Orders passed by a Magistrate under Ss. 295, 296, without reference to the Sessions Judge, are, however, appealable under S. 409.

The warrant of a Magistrate under S. 297 should direct the prisoner to be detained until receipt of the orders of the Sessions Court, with a proviso that such detention should not exceed three years. When the Sessions Court has disposed of the case, it should forward a copy of its order, together with a warrant for execution, to the Magistrate of the District or other Officer in charge of the Jail, who should proceed to have such order carried out according to the exigency thereof.—9 W. R., 1 C. L.

Court of Session may require security not exceeding three years.

299. If the Court of Session‡ shall not think it safe to direct the immediate discharge of such person, it shall fix a limited period for his detention, not exceeding three years, in the event of his not giving the security required from him.

‡ S. 13.

See S. 301. See also 9 W. R., 1 C. L. quoted in note to S. 298

There is no appeal from an order passed by a Sessions Judge under S. 299 (3 Agra, 108); but the High Court can, under S. 404, revise such an order.—Juswunt Singh, 6 W. R., 18.

What the order for security is to contain.

300. In every instance in which security for good behaviour shall be required by the Court of Session,§ or the Magistrate‖ or other Officer as aforesaid,‖ the amount of the security, the number of sureties, and the period of time for which the sureties are to be responsible for the good conduct of the person required to furnish security, shall be stated in the order. The security-bond shall be in the form (F) given in the Appendix, or to the like effect.

§ S. 13.

‖ S. 295.

In default of security, party to be committed to prison.

301. In the event of any person required to give security under the provisions of the foregoing Sections failing to furnish the security so required, he shall be committed to prison until he furnish the same. Provided that no party shall be kept in prison for a longer period than that for which the security has been required from him.

Proviso.

As regards the nature of the imprisonment to be undergone by a person failing to furnish security for good behaviour, the practice seems to be various. The Calcutta High Court [Cir. 23, 1862], the Agra Sudder Court, and the

CH. XIX. Judicial Commissioner, Oude, have ruled that the terms "shall be committed
Ss. 302–304. to prison" imply simple confinement in Jail; the Judicial Commissioner, Punjab, [3155, June 28th, 1862], on the other hand, has ordered that the imprisonment should be rigorous, but may be simple. The Madras High Court has directed Magistrates to follow the terms of the law, as they had no further concern with the matter: thus apparently leaving it to the officer in charge of the Jail to exercise his discretion.

After expiration of the term of confinement in default of security, a second security cannot be demanded, except upon some new proof of bad livelihood, or that a person is not capable of following an honest calling.

If upon being set at liberty he should return to his former course of life, and it appears that he continues to be a person of dangerous character, whom it is dangerous for the community to have at large, he may be brought before a Magistrate, and, after evidence of his proceedings has been laid before such Magistrate, a further order may be passed ordering him to give fresh security.—Calcutta High Court, Sheikh Himayut, July 29th, 1862; also Juswunt Singh, 6 W. R., 18.

An escape or attempt to escape from any custody in which a person is lawfully detained for failing to furnish any security required under Chapter XIX. of this Code is punishable with imprisonment, either simple or rigorous, for one year, or with fine or both.—Act IV. 1867, S. 3.

* Ss. 14, 18. † S. 16.

When Magistrate may release persons under requisition of security.

302. The Magistrate of the District* or other Officer exercising the powers† of a Magistrate is empowered, at any time, to exercise his discretion in releasing, without reference to any other authority, any prisoner confined under requisition of security for good behaviour, whether by his own order, or by the order of any Officer subordinate to him, provided he shall be of opinion that such person can be released without hazard to the community.

‡ S. 302.

When he must report.

303. In any case in which a Magistrate‡ or other Officer as aforesaid‡ shall be of opinion that any person confined under requisition of security for good behaviour by order of a Court of Session, can be safely released without such security, the Magistrate or other Officer as aforesaid shall make an immediate report of the case for the orders of the Court which shall have required the person to furnish the security.

§ S. 302.

Discharge of surety.

304. A surety for the good behaviour of a person may at any time apply to the Magistrate§ or other Officer as aforesaid§ to be relieved from his engagement as surety. On such application being made, the Magistrate or other Officer as aforesaid shall issue his summons or warrant, in order that the person may appear or be brought before him. On the appearance of the party pursuant to the warrant, or on his voluntary surrender, the Magistrate or other

Officer as aforesaid shall direct the engagement of the surety to be cancelled, and shall call upon the person to give fresh security, and, in default thereof, shall commit him to custody.

Proceeding to compel payment of penalty by sureties.

305. Whenever the Magistrate* or other Officer as aforesaid* shall be of opinion that, by reason of an offence proved to have been committed by the person for whose good behaviour security has been given, subsequent to his having given such security, proceeding should be had upon the bond executed by the surety, he shall give notice to the surety to pay the penalty, or to show cause why it should not be paid ; and if no sufficient cause be shown, the Magistrate* or other Officer as aforesaid* shall proceed to recover the penalty from such surety by the attachment and sale of any moveable† property belonging to such surety which may be found within the jurisdiction of the Magistrate‡ of the District ; and if the penalty be not paid, and cannot be recovered by such attachment and sale, such surety shall be liable to imprisonment by order of the Magistrate or other Officer as aforesaid in the Civil Jail, for a period not exceeding six months.

* S. 302

† S. 6.

‡ Ss. 14, 18.

Issue of summons and warrant of arrest.

306. The several provisions of the last preceding Chapter, relating to the issue of summons§ and warrant of arrest‖ for securing the personal attendance of the party informed against, shall apply to proceedings taken under this Chapter against persons required to give security for their good behaviour.

§ S. 283.
‖ S. 285.

Manner of taking evidence under Chapter XVIII. or this Chapter

307. Any evidence taken under Chapter XVIII. or this Chapter, shall be taken in the manner prescribed by Section 267, subject to the provision contained in Section 268 of this Act.

S. 267 enacts that "the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds. The memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record. If the Magistrate shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record. The Magistrate shall record such remarks as he shall think material respecting the demeanor of any witness whilst under examination." S. 268 enacts that "in any case in which the Magistrate shall consider it necessary, it shall be competent to him, instead of taking

CH. XX. S. 308.

down merely the substance of the evidence of any witness, to take down the evidence of the witness in the manner provided in S. 195, or in the manner provided in S. 196 of this Act, if within the jurisdiction of such Magistrate the Local Government shall have made an order as provided in that Section. In such case the provision of Ss. 199 and 200 shall be applicable to the evidence so taken."

CHAPTER XX.—Ss. 308—315.

Of Local Nuisances.

The Agra Sudder Court and the Judicial Commissioners of the Punjab and of the Central Provinces have ruled that Chapter XX. applies to cases in which European British subjects are concerned.

* Ss. 14, 18.

† S. 18.

Magistrate may order removal of nuisances.

308. Whenever the Magistrate* of a District or of a division† of a District may consider that any unlawful obstruction or nuisance should be removed from any thoroughfare or public place, or that any trade or occupation, by reason of its being injurious to the health or comfort of the community, should be suppressed, or should be removed to a different place, or that the construction of any building, or the disposal of any combustible substance, as likely to occasion conflagration, should be prevented, or that any building is in such a state of weakness that it is likely to fall, and thereby cause injury to persons passing by, and that its removal in consequence is necessary, or that any tank or well adjacent to any public thoroughfare should be fenced in such a manner as to prevent danger arising to the public, he may issue an order to the person causing such obstruction or nuisance, or carrying on such trade or occupation, or being the owner or in possession of, or having control over, such building, substance, tank, or well as aforesaid, calling on such person, within a time to be fixed in the order, to remove such obstruction or nuisance, or to suppress or remove such trade or occupation, or to stop the construction of, or to remove such building, or to alter the disposal of such substance, or to fence such tank or well, (as the case may be), or to appear before such Magistrate within the time mentioned in the order, and show cause why such order should not be enforced.

S. 62 empowers a Magistrate to act summarily in several of the cases provided for also in S. 308.—See note to S. 62.

S. 268, Penal Code, declares that a "person is guilty of a public nuisance, who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused, on the ground that it causes some convenience or advantage."

A Magistrate having once commenced proceedings under S. 308, cannot take up the matter summarily under S. 62. He is bound to act in the manner laid down in Chapter XX.—Potee Singh, 8 W. R., 37. Immediate action is allowable only in the cases provided for in S. 314. In all other cases, the forms prescribed in Chapter XX. must be carefully observed.—Rajah Indoobhoosun Deb Roy, 1 W. R., 8.

A Magistrate cannot interfere to re-open a private path leading from the house of a person to a public thoroughfare, as such path is not a thoroughfare or public place. The person affected was referred to the Civil Court.—Jankee Nath Bhuttacharjee, 2 W. R., 36.

Nor can a Magistrate order the removal of an obstruction of a drain into which the sewage of certain premises fell.—*In re* Troylokhonath Bose, *5* W. R., *58*. When a public thoroughfare is obstructed, a Magistrate is bound to proceed under Chapter XX., and not under S. 320.—Baroda Proshad Moostafee, *5* W. R., *5*.

As to the jurisdiction of the Civil Courts to entertain a suit regarding a matter dealt with under Chapter XX., see S. 311 and note.

309. Such order shall, if practicable, be served personally on the person to whom it is issued; but if personal service is found to be impracticable, the order shall be notified by proclamation, and a written notice thereof shall be stuck up at such place or places as may be best adapted for conveying the information to such person.

Service or notification of order

The proclamation would probably be made in the manner prescribed by S. 183 for cases in which proclamation is made for an accused person who may have absconded or concealed himself to avoid a warrant of arrest.

The mere absence of service of notice to remove a nuisance is not sufficient ground for interference with the order of a Magistrate when it appears that the parties did not take that objection before that Officer, but they rather admitted knowledge of the existence of the notice, and sought to excuse their failure to object to it.—Hochan *vs.* Elliot, 5 W. R., 4.

310. The person to whom such order is issued shall be bound, within the time specified in the order, to obey the same, or to appear before the Magistrate to show cause as aforesaid, or he may apply to the Magistrate by petition for an order for a Jury to be appointed to try whether the order is reasonable and proper. On receiving such petition, the Magistrate shall forthwith appoint a Jury, which shall consist of not less than five persons, whereof the President and one-half of the Members shall be nominated by such Magistrate, and the remaining Members by the party petitioning. The Magistrate shall suspend the execution of the order

Person ordered shall obey the order, or may claim a Jury.

Constitution of Jury.

pending such enquiry, and be guided by the decision of the Jury, which shall be according to the opinion of the majority. If the petitioner shall, by neglect or in any other way, prevent the appointment of a Jury, or if from any cause the Jury so appointed shall not decide and report within a reasonable time to be fixed in the order for the appointment, their functions shall cease from the date of the expiration of such period, unless they be continued by special order of the Magistrate ; and if from any of the above causes no decision be made by the Jury, the order of the Magistrate shall be carried into effect as hereinafter provided.

Proceeding in case of neglect by Jury.

The petition for an order for the appointment of a Jury should be written on a Stamp Paper of 8 annas.—See Act XXVI. 1867, Schedule B., Art. 10.

In appointing a Jury under this Section, the Magistrate should be careful to fix a time within which their report must be submitted. "The Magistrate shall suspend the execution of the order, &c." In special cases a discretionary power is reposed in the Magistrate to enforce immediate obedience to his orders.—See S. 314.

The Jury having failed to report within the prescribed time, but having reported subsequently, it was held by the Bombay High Court that the Magistrate was bound to give due weight thereto, and should not have proceeded to enforce his order, at the same time refusing to permit the party concerned to show cause against it under S. 313. The Court remarked that the law evidently contemplates that considerations of justice and equity should form the rule of the Magistrate's conduct in such matters. The exercise of such summary powers requires both experience and discretion in a Magistrate, and a careful consideration of the rights of property.—Dalsukram Haribhai, 2 Bombay, 410.

311. If the person to whom the order mentioned in Section 308 is issued shall not obey such order, or show cause against the same as hereinafter provided, or petition for a Jury within the time specified in such order, he shall be liable to the penalty prescribed in that behalf in Section 188 of the Indian Penal Code, and the Magistrate who issued such order may proceed to carry such order into execution at the expense of such person, and may realize such expenses either by the sale of any building, goods, or other property removed by his order, or by the distress and sale of the personal property of the person aforesaid, and no suit or action shall be entertained in any Court in respect of anything necessarily or reasonably done to give effect to such order.

Procedure in case of disobedience or neglect by party ordered.

S. 188 of the Indian Penal Code declares that "whoever, *knowing that*, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience cause or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a

term which may extend to one month, or with fine which may extend to two hundred Rupees, or both: and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or both. *Explanation.*—It is not necessary that the offence should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm."

By the Schedule to this Act, offences under S. 188 are triable only by the Magistrate of the District (*i. e.*, an Officer exercising the powers of a Magistrate) and a Subordinate Magistrate of the 1st class.

"Personal property," that is, moveable property, defined in S. 6.

As to whether an action will lie in the Civil Courts on the part of a person suing for a declaration that a road declared by a Magistrate to be a public road is his private road, and for a reversal of that order, the judgments of the Calcutta High Court in the cases reported are somewhat conflicting. In the case of Pran Kissen Surma (Marshall's Reports, p. 214), it was held that no action lay regarding a right of way declared by a Magistrate to be open to the public; but in the case of Sham Doss (1 W. R., 324, *Civil cases*), it was held, that as the action was to reverse the order of the Magistrate, on the ground that it was passed without jurisdiction, the suit could be entertained. It would seem that the orders called in question in these cases were passed under Act XXI. 1841, since repealed.

In the case of Kedarnath Mookerjea (2 W. R., 267, *Civil Cases*), it was held that no suit would lie to reverse an order passed by a Magistrate under S. 308; and in the case of Bakas Ram Sahoo (7 W. R., 11, *Civil Cases*), it was held that the question of right of way could not be raised in a suit between two parties after a Magistrate had formally declared it to be a public road; but in the case of Azeemoollah Gazee (7 W. R., 48, *Civil Cases*), it was held that if a Magistrate by an order, under S. 308, has encroached upon private ground, a Civil suit by the party injured would lie, and a similar opinion was expressed in the cases of Ram Shodhai Ghose (7 W. R., 95, *Civil Cases*), and Gooroo Churn Goho (8 W. R., 269).

If Jury find order of Magistrate to be reasonable and proper.

312. If, in a case referred to a Jury, the Jury shall find that the order of the Magistrate is reasonable and proper, the Magistrate shall give notice thereof to the person to whom the order was issued, and shall add to such notice an order to obey the order first mentioned within a time to be fixed therein, under the penalty provided by the Indian Penal Code as aforesaid. If such latter order shall not be obeyed, the Magistrate may proceed as in the last preceding Section.

If party ordered satisfy the Magistrate that the order is not reasonable and proper.

313. If the person to whom the order of the Magistrate is issued, shall appear and show cause against the same, and shall satisfy the Magistrate that the order is not reasonable and proper, no further proceedings shall be taken in the case.

Issue and enforcement of injunction.

314. If, pending the enquiry by a Jury, the Magistrate shall consider that immediate measures are necessary to be taken

CHS. XX. and XXI. Ss. 315&316.

to prevent imminent danger or injury of a serious kind to the public, it shall be lawful for such Magistrate to issue such an injunction and order to the person mentioned in that behalf in Section 308, as shall be required to obviate or prevent such danger or injury, and in default of such person forthwith taking all necessary measures ordered to be taken by such injunction or order, the Magistrate may himself use or cause to be used such means as may be necessary to obviate such danger, or to prevent such injury, and no suit or action shall be entertained in respect of anything necessarily or reasonably done for that purpose.

Immediate action can be taken by a Magistrate only when the matter is pending before a Jury. In all other cases the forms prescribed by Chapter XX. must be strictly observed.—Rajah Indrobhoosun Roy, 1 W. R., 8.

315. Nothing in this Chapter shall interfere with the provisions of Section XLVIII. of Act XXIV. of 1859 *(for the better regulation of the Police within the territories subject to the Presidency of Fort St. George)*, or of Section XXXIV. of Act V. of 1861 *(for the regulation of Police)*.

Saving of certain provisions.

CHAPTER XXI.—Ss. 316—317.

Of the Maintenance of Wives and Children.

The Agra Sudder Court and the Judicial Commissioners of the Punjab and of the Central Provinces have ruled that European British subjects come under the operation of Chapter XXI., such cases not being trials.—[See S. 25].

316. If any person having sufficient means neglects or refuses to maintain his wife or any legitmate or illegitimate child unable to maintain himself, it shall be lawful for the Magistrate of the District* or other Officer exercising the powers of a Magistrate,† upon due proof thereof, to order such person to make a monthly allowance for the maintenance of his wife or such child at such monthly rate, not exceeding fifty Rupees in the whole, as to the Magistrate* or other Officer as aforesaid† shall seem reasonable ; and if such person shall wilfully neglect to comply with the order, the Magistrate or other Officer as aforesaid may, for every breach

Magistrate may make order for maintenance of wives and children.

* Ss. 14, 18.

† S. 16.

Enforcement of order.

of the order, by warrant, direct the amount due to be levied in the manner* provided for levying fines ; or may order such person to be imprisoned with or without hard labor for any term not exceeding one month.

* S. 61.

Proviso. Provided that if such person offer to maintain his wife on condition of her living with him, and his wife shall refuse to live with him, it shall be lawful for the Magistrate or other Officer as aforesaid to consider any grounds of refusal stated by such wife ; and he may make the order allowed by this Section notwithstanding such offer, if he shall be satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty. No wife shall be entitled to receive an allowance from her husband under this Section, if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband.

An order under S. 316 must be founded on proof in the same proceedings, and not upon knowledge acquired by the Magistrate in another case.—Lopotee Domnee, 8 W. R., 67.

The inability of a wife to live with her husband without proof of cruelty is no ground for decreeing her a separate maintenance.—Mussamut Jesmut, 6 W. R., 59.

S. 316 does not deprive a wife of any remedy in the Civil Courts, which she would otherwise have had.—Lalla Gopeenath *vs.* Mussamut Jeetun Koer, 6 W. R., 57. *(Civil cases).*

It has been held by the Calcutta High Court, in the case of Jaddo Mussulmani and another (6 W. R., 90), that a nikah marriage between Mahomedans is a marriage within the purview of Ss. 494 (adultery) and 495 (bigamy) of the Penal Code. Probably, therefore, a nikah wife might apply for maintenance under S. 316.

The Calcutta High Court [1089, 1863] quashed the order of a Magistrate requiring a man to pay a monthly allowance to a woman until the birth of his illegitimate child, and after its birth to contribute monthly towards its support. The Court remarked that the law empowers a Magistrate to order maintenance to children, legitimate and illegitimate, against the father, and to wives against the husband; but not to unmarried women in a state of pregnancy.

There is no appeal against an order passed by a Magistrate under S. 316, but a Sessions Judge can always call for the record of such a case, and if he finds that the order is illegal, he can refer it under S. 434 to the High Court.—*Id.* 328, 1854, also Jud. Comr., Punjab, 1863. See also cases of Mussamut Jesmut, 6 W. R., 59, and Gholam Hossein Chowdry, 7 *Ibid*, 10.

317. Any person ordered to pay a monthly allowance for the maintenance of his wife, or child, or both, under the provisions of the last preceding Section, may apply to the Magistrate from time to time for the reduction of such allowance, and on proof of an alteration in the circumstances of such person, his wife, or child, justifying such reduction, such Magistrate may make such reduction in the allowance ordered as he may deem fit.

Application for reduction of allowance.

CH. XXII. Ss. 319 & 320.

Juggobundho Sircar, 3 W. R., 53. There is no appeal against an order passed under S. 318, (Dewan Elahee Newaz Khan, 5 W. R., 14), but if the order be contrary to law, it should be submitted to the High Court under S. 434.

319. If the Magistrate* or other Officer as aforesaid* shall decide that neither of the parties is in possession, or shall be unable to satisfy himself as to which person is in possession of the subject of dispute, he may attach the subject of dispute, until a competent Civil Court shall have determined the rights of the parties, or who ought to be in possession.

* S. 318.

If previous possession cannot be ascertained, Magistrate may attach subject of dispute.

The alteration between the present and the former law [Act IV. of 1840, S. 3,] should be noted. Under Act IV. of 1840 it was necessary that, after making the attachment, the Magistrate should give information to the Collector, and it was enacted that, if the subject of dispute be land, the provisions of Reg. V. of 1827, regarding attachment by order of a Civil Court shall apply to attachments by order of a Magistrate made under this Section.

These provisions have been repealed, and have not been re-enacted. Collectors have been forbidden by the Board of Revenue, Bengal, to act in such matters. On a reference made to it on the subject, the Calcutta High Court has stated that there were no grounds for doubting the correctness of these orders.—5 W. R., 3 C. L.

320. If a dispute arise concerning the right of use of any land or water, the Magistrate† or other Officer as aforesaid† within whose jurisdiction the subject of dispute lies, may enquire into the matter; and if it shall appear to him that the subject of dispute is open to the use of the public, or of any person, or of any class of persons, the Magistrate or other Officer may order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person, or of such class of persons, as the case may be, until the party claiming such possession shall obtain the decision of a competent Court adjudging him to be entitled to such exclusive possession. Provided that the Magistrate or other Officer as aforesaid shall not pass any such order, if the matter be such that the right of use is capable of being exercised at all times of the year, unless that right shall have been ordinarily exercised within three months from the date of the institution of the enquiry, or in cases where the right of use exists at particular seasons, unless such right has been exercised during the last of such seasons before the complaint.

† S. 318.

Disputes concerning right of use of land or water.

There is nothing in S. 320 which makes it imperative that there should be an impending breach of the peace, before a Magistrate can interfere to decide a right of way.—Troylokhonath Sircar, 2 W. R., 64. The obstruction of a public thoroughfare should not be dealt with under S. 320, but under S. 308.—Baroda Proshad Moostofee, 5 W. R., 5.

A Magistrate cannot act under S. 320 unless it is established in evidence that "the subject of dispute is open to the use of the public, or of any person, or of any class of persons." Stale disputes should not be dealt with under S. 320.—Srimonto Dolai, 5 W. R., 57.

A dispute regarding the obstruction of a drain into which the sewage of certain persons fell is not a matter to be adjudicated under S. 320.—Troylokhyonath Bose, 5 W. R., 58.

Because a person has another means of ingress and egress, a Magistrate should not order that he should make use of one passing through another person's land. A Magistrate is bound to enquire into and decide when the latter road was open to use in the manner specified in S. 320.—Troylokhyonath Sircar, 2 W. R., 64.

Saving of powers of Collectors and Revenue Courts.

321. Nothing in this Chapter shall affect the powers of a Collector or a person exercising the powers of a Collector or of a Revenue Court.

See Reg. (Bengal) VII. of 1822, S. 34.

CHAPTER XXIII.—Ss. 322—354.

Of Juries and Assessors.

These are public servants under cl. 5, S. 21, Penal Code.

Local Government by order to specify in what places trials to be by Jury.

322. The Local Government may order that the trial of all offences, or of any particular class of offences, by any Court of Session,* shall be by Jury in any District,† and such Local Government may from time to time revoke or alter such order. Orders passed under this Section shall be published in the *Government Gazette*, and in such other manner as the Local Government shall direct.

* S. 13.
† S. 18.

The Government of Bengal have ordered [January 7th, 1862] that, in the Districts of the 24-Pergunnahs, Hooghly, Burdwan, Moorshedabad, Nuddea, Patna, and Dacca, the trial by any Court of Session of any of the offences provided for by Chapters VIII., XI., XVI., and XVII., of the Indian Penal Code, shall be by Jury. These Chapters relate to offences against the public tranquillity: false evidence and offences against public justice: offences affecting the human body: offences against property. On May 27th, 1862, offences under Chapter XVIII. of the Indian Penal Code, *i. e.*, offences relating to documents and to trade or property marks, were added to the above list; and on October 13th, 1862, it was further extended by the addition of trials for abetments of, or attempts to commit, any of the above offences. In the Province of Assam *all* trials in the Sessions Court are held by Jury.—Government of Bengal, March 28th, 1862.

After the Government order, that the trial of all offences by the Court of Session in Assam shall be by Jury, Goalparah, then a District of Assam, was transferred to Cooch Behar, and made subordinate to the Sessions Court of that Province. Held, that trial by Jury in Goalparah ceased with the transfer from Assam.—Khoodeeram, 8 W. R., 39.

CH. XXIII. S. 323.

In Madras the Government has introduced the system of trial by Jury in the Sessions Courts of Chittoor, Chuddapah, Rajahmundry, Tanjore, Tranquebar, Cuddalore, and Vizagapatam, but only for the following offences:—

Theft, under Ss. 379, 380, 381, Penal Code.

Robbery or gang robbery, under Ss. 392-3-4-5, 397-8-9, 400-1-2.

Receiving stolen property, under Ss. 411-2-4.

House-breaking, &c., Ss. 451-2-3-4-5-6-7-8-9, 461.

In the Presidency of Bombay trial by Jury has only been introduced in the Sessions Court of Poona for all offences under Chapters VIII., XI., XII., XVI., XVII., XVIII, of Penal Code, punishable with death, transportation for life, or imprisonment for 10 years or upwards; also for all abetments of, and attempts to commit, any of such offences.

In the trial of cases in which offences are charged, some of which should be tried by Jury [S. 322], and others with the aid of Assessors [S. 324], it has been the practice in Sessions Courts in Bengal that the Judge should take the verdict of the Jury on the charges relating to offences which they are competent to try, and that he should then regard the Jurors as Assessors, and take their opinion [S. 324] on the other charges. In such a case both a statement of the Judge's direction to the Jury [S. 379], and the grounds of his decision, should form part of the record. The Calcutta High Court has never expressed any opinion on this procedure, which has in several cases come before it as a Court of Appeal.

When a trial has been erroneously held by Jury, instead of with the aid of Assessors, the offence being one for which the Government orders had not been issued, the Calcutta High Court would not interfere as a Court of Revision, because the Sessions Judge had expressed his opinion in concurrence with the verdict of the Jury, whose verdict would, therefore, be regarded as one delivered by Assessors.—5 W. R., 3 C. L.

* S. 13.

How the Jury is to be constituted for the trial of persons belonging to certain specified races.

323 Criminal trials before the Court of Session,* in which a European (not being a British subject) or an American is the accused person, or one of the accused persons, shall be by Jury; and in such case the Jury, if such European or American desire it, shall consist of at least one-half of Europeans (whether British subject or not) or Americans, if such a Jury can be procured. Provided that in any District† in which the Local Government shall not have ordered that all trials or trials for all offences of the class within which the trial about to take place falls, shall be by Jury, such European or American may elect to be tried without Jury.

Proviso.

† S. 18.

For the mode of summoning and empannelling a Jury under this Section, see S. 349.

Sessions Judges are required by the Calcutta High Court [Cir. 4, 1865], in all cases in which Special Juries under S. 323 may have been empannelled, to record in English, before commencing the proceedings of the trial, the names of all the Jurymen in attendance at the Sessions; and, after the selection by lot, under S. 342, from among the persons who are to constitute the Jury in the particular case before the Court, they should mark the names of those selected. These papers should form part of the record of the case. If, in accordance with S. 343, any objection be raised to any Juror, the name of the objector, the nature of the objection, and the decision of the Court, should also be recorded. The verdict to the Jury should be stated on the paper on which the above details have been set forth.

Trials before the Session Court with Assessors.

324. In a trial before the Court of Session* not by Jury, the trial shall be conducted with the aid of two or more Assessors as Members of the Court. The opinion of each Assessor shall be given orally, and shall be recorded in writing by the Court, but the decision is vested exclusively in the Judge. * S. 13.

For the practice in Bengal regarding the trial of cases in which offences may be charged, some of which should be tried by Jury, and others with the aid of Assessors, see note to S. 322.

If a prisoner plead guilty, the opinion of the Assessors should not be taken.—5 W. R., 2 C. L.

The following instructions have been issued by the Calcutta High Court [Cir. 4, 1865] to all Sessions Judges:—

"The record of the opinion of such Assessor should appear at the commencement of the judgment of the Sessions Judge. It is not sufficient that this record should contain a mere verdict of guilty or not guilty, or proven or not proven: what the High Court requires is not only the result arrived at by each Assessor sitting on a Sessions trial, but if possible the reasons by which each Assessor arrived at that result, that is, the grounds of his opinion. While avoiding prolixity, a Sessions Judge should be careful to be intelligible and precise in recording such opinions."—See also Bushmoo Aurut, 3 W. R., 21. The Agra Sudder Court apparently require that the opinion delivered by an Assessor should be signed by him.—See 4 Agra, 182.

How the Jury is to be constituted for the trial of other persons.

325. In a trial by Jury before the Court of Session,† in which a person not belonging to the races specified in Section 323 shall be tried, at least one-half of the Jury, if the accused person desire it, shall consist of persons not belonging to either of such races. † S. 13.

How the Jury is to be constituted when persons of both descriptions are jointly charged.

326. In any case before the Court of Session,‡ in which a person not belonging to the races mentioned in Section 323 is charged jointly with a person belonging to one of those races, and such last mentioned person claims to be tried by a Jury consisting of at least one-half of Europeans or Americans, the person not belonging to either of such races shall, if he desire it, be tried separately. ‡ S. 13.

Number of which the Jury is to consist.

327. In trials by Jury before the Court of Session,§ the Jury shall consist of five persons, or of such number, being an uneven number, and not being less than five or more than nine, as the Local Government by any general order applicable to any particular District or to any particular classes of offences in that District shall direct. § S 13.

Seven has been fixed by the Government of Bengal as the number of all Juries under the Code of Criminal Procedure.—Government Order, 3173, December 28th, 1861.

328. If the Jury are unanimous in a verdict of guilty, the accused person shall be convicted. If the Jury shall consist of five persons, and a majority of four find the accused person guilty, or if the Jury shall consist of seven persons, and a majority of five find the accused person guilty, or if the Jury shall consist of nine persons, and a majority of six find the accused person guilty, the accused person shall be convicted. If the Jury are unanimous in a a verdict of not guilty, the accused shall be acquitted. If the Jury shall consist of five persons, and a majority of four find the accused person not guilty, or if the Jury shall consist of seven persons, and a majority of five find the accused person not guilty, or if the Jury shall consist of nine persons, and a majority of six find the accused person not guilty, the accused person shall be acquitted, and the Judge shall not receive a verdict of acquittal unless it be unanimous or found by such majority as last aforesaid.

Number of voices necessary to verdict.

S. 351 provides for cases in which there may be no verdict by reason of there not being such a majority of the Jurors as is required by the foregoing Section.

329. The Collector of the District or other Officer exercising the powers of a Collector of a District shall, from time to time, prepare and make out in alphabetical order, a list of persons residing within ten miles from the place where trials before the Court of Session* are held, or within such other distance as the Local Government may think fit to direct, who are in the judgment of the Collector or other Officer as aforesaid qualified from their education and character to serve as Jurors or as Assessors respectively. The list shall contain the name, place of abode, and quality or business of every such person; and if the person belongs to either of the races specified in Section 323, the list shall mention the race to which he belongs.

List of Jurors and Assessors.

* S. 13.

The Collector should apparently enter in the list of Jurors or Assessors, the names of all qualified persons residing within the prescribed limits, except those who are by Ss. 333, 334, declared to be incapable of serving as such. Persons exempted under S. 335 should claim such exemption, and should not of necessity be excluded.

330. Copies of such list shall be stuck up in the Office of the Collector or other Officer as aforesaid, and in the Court-houses of the Magistrate of the District* and of the Chief Civil Court, and in some conspicuous place in the town or towns near or in the vicinity of which the persons named in the list reside, and every such copy shall have subjoined to it a notice, stating that objections to the list will be heard and determined by the Collector or other Officer as aforesaid at a time and place to be mentioned in the notice.

Publication of list.

* Ss. 14, 18.

331. The Collector or other Officer as aforesaid shall at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not qualified in his judgment to serve as a Juror or as an Assessor, and insert the name of any person omitted therefrom, whom he deems qualified for such service. A copy of the revised list shall be signed by the Collector or other Officer as aforesaid and transmitted to the Court of Session. Any order of the Collector or other Officer as aforesaid in preparing and revising the list shall be final.

Revision of list.

332. The list so prepared and revised shall be again revised at least once in every year, and the list so revised shall be deemed a new list, and shall be subject to all the rules† hereinbefore contained as to the list originally prepared.

Further revision of list.

† Ss. 330, 331.

See note to S. 329.

333. Except as hereinafter provided, all male persons between the ages of twenty-one and sixty, resident within the limits of the jurisdiction of the Court of Session,‡ shall be deemed capable of serving as Jurors and Assessors, and shall be liable to be summoned accordingly.

Jurors.

‡ S. 13.

334. The following persons are incapable of serving as Jurors or as Assessors in trials before the Court of Session,§ namely:

Disqualifications.

§ S. 13.

Persons who hold any office in or under the said Court.

Pleaders and Mookhtars do not hold office under the Court of Session, and are, therefore, not incapable of serving as Jurors or Assessors.—7 W. R., 1 C. L.

CH. XXIII. S. 335.

Persons executing any duties of Police or entrusted with any Police functions.

Persons who have been convicted of any offence against the State, or of any fraudulent or other offence which, in the judgment of the Collector, renders them unfit to serve on the Jury.

Persons who are afflicted with any infirmity of body or mind, sufficient to incapacitate them from serving.

Persons who, by habit or religious vows, have relinquished all care of worldly affairs.

S. 333 would add to this list all persons under twenty-one years of age and above sixty.

There are certain other persons [see S. 344] who, though not disqualified, may be objected to as Jurors in any particular case.

335. The following persons are exempt from the liability to serve as Jurors or as Assessors, namely:—

Exemptions.

Judges and other Judicial Officers.

Commissioners and Collectors of Revenue or Customs.

All persons engaged in the Preventive Service in the Customs Department.

All persons engaged in the collection of the Revenue whom the Collector may think fit to exempt on the ground of official duty.

Chaplains and others employed in Religious Offices.

All persons in the Military service.

Surgeons and others who openly and constantly practise in the profession of Physic.

Persons employed in the Post Office and Electric Telegraph Departments.

Persons actually officiating as priests in their respective religions.

Persons exempted by Government from personal appearance in Court under the provisions of Section 22 of Act VIII. of 1859 *(for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)*.

Person exempted is not bound to avail himself of his right of exemption.

The exemption from service given by this Section is a right of which each person exempted may avail himself or not.

Nothing herein contained shall be construed to disqualify any such person, if he shall be willing to serve as a Juror or as an Assessor.

The exemption of persons in the Military service does not extend to persons summoned by the Chief Court, Punjab, unless the Commanding Officer shall desire to have them excused, on the ground of urgent Military service, or for any special Military reason.—Act IV., 1866, S. 30.

Collectors should include, in the lists of Jurors or Assessors prepared by them, the names of the above-mentioned persons, leaving it to them to claim exemption or to serve.

Court to summon Jurors.

336. The Court of Session* shall ordinarily, three days at the least before the time fixed for the holding of Sessions, cause the Magistrate to summon as many persons named in the said revised list as seem to the Court to be needed for trials by Jury and trials with the aid of Assessors at the said Sessions, the number to be summoned not being less than double the number required for any case about to be tried at such Sessions. The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them, and shall be specified in the precept to the Magistrate. * S. 13.

This Section is by Act IV., 1866, S. 30, made applicable to trials held by the Chief Court, Punjab.

For the mode of summoning a Special Jury, such as may be necessary under S. 223, see S. 349.

It is not necessary that a double set of Assessors should be summoned in each case about to be tried at the Sessions, but the Court should cause the Magistrate to summon as many persons as are likely to be needed, not less than double the number required for one case.—Madras High Court, 1863.

Form and service of summons.

337. Every summons to a Juror or Assessor shall be in writing,† and shall require his attendance as a Juror or Assessor at a time and place to be therein specified. The summons or a copy thereof shall be served on every Juror or Assessor personally. If the Juror or Assessor summoned be absent from his usual place of abode, the summons may be left for him there with some adult male member of his family residing with him. †S. 10

This and the three following Sections are by Act IV., 1866, S. 30, made applicable to trials held by the Chief Court, Punjab.

Power of Court to summon another set of Jurors or Assessors.

338. The Court of Session‡ may direct Jurors or Assessors to be summoned at other periods than the period specified in Section 336, when the number of trials before ‡S. 13.

CH. XXIII. Ss. 339—343.

the Court renders the attendance of one set of Jurors or Assessors for a whole Session oppressive, or whenever it may be found to be necessary.

See note to S. 337.

339. If any person summoned to serve as a Juror or Assessor, be an Officer of Government, the summons shall be transmitted to such person through the Head Officer of the Office in which he is employed, and the Court may excuse the attendance of such person, if it shall appear on the representation of such Head Officer that such person cannot serve as a Juror or Assessor without inconvenience to the public service.

Service of summons to serve as Juror or Assessor on an Officer of Government.

See note to S. 337.

340. The Court of Session* may excuse any Juror or Assessor from attendance for reasonable cause.

Court may excuse attendence of a Juror or Assessor.

* S. 13.

See note to S. 337.

341. At each Session the Court shall cause to be made a list of the names of those who serve as Jurors or Assessors at such Session. The list shall be kept with the revised list of the Jurors and Assessors prepared under Section 331. A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this Section.

List of names of Jurors or Assessors attending at each Session.

342. Whenever a trial by Jury is to be held, the persons who are to constitute the Jury shall be chosen by lot immediately before the commencement of the trial from the Jurors who attend in obedience to the summons. If the trial is to be held with the aid of Assessors, the Judge shall select from the persons summoned to act as Assessors, two or more persons to assist him in such trial.

Jurors to be chosen by lot.

Assessors to be selected by Judge.

For the mode of empannelling a Special Jury, such as may be required under S. 323, see S. 349.

343. Before the commencement of a trial by Jury the names of the Jurors shall be called aloud, and upon the appearance of each Juror, the accused person shall be asked if he objects to be tried by such Juror. Any objection† may then be made to such

Names of Jurors to be called.

Objections.

† See S. 344.

Juror by the accused person or by the Government Pleader, or other person appointed to conduct the prosecution, and the grounds of objection shall be stated. Any objection made to a Juror shall be decided by the Court, and the decision of the Court shall be final. If an objection be allowed, the place of such Juror shall be supplied by any other Juror in attendance in obedience to a summons, or if there be no such Juror present, then by any other person present in the Court whose name is on the list of Jurors, or whom the Court shall consider a proper person to serve on the Jury, provided no objection to such Juror or other person be made and allowed.

Before commencement of the proceedings of a trial, the Sessions Judge should record, in English, the names of all the Jurymen in attendance at the Sessions, and, after selection by lot, under S. 342, of the persons who constitute the Jury in the particular case before the Court, the names of those selected. These papers should form part of the record of the case. If any objection be raised to any Juror, the name of the objector, the nature of the objection, and the decision of the Court should be recorded.—Calcutta High Court, Cir. 4, 1865.

There is no provision made for the swearing in of Jurors or Assessors.—Madras High Court.

"The same Jury, if not objected to, may try, or the same Assessors may aid in the trial of, as many accused persons successively as to the Court shall seem expedient."—S. 347.

Grounds of objection.

344. Any objection taken to a Juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed :—

(1). Any ground of disqualification within Section 334.

(2). Standing in the relation of husband, master or servant, landlord or tenant, to the person alleged to be injured or attempted to be injured by the offence charged, or to the person on whose complaint the prosecution was instituted, or to the person accused ; being in the employment on wages of either of such persons ; being plaintiff or defendant against either of such persons in any Civil suit, or having complained against, or having been accused by either of such persons in any Criminal prosecution.

(3). Any circumstance which, in the judgment of the Court, is likely to cause prejudice against, or favor to, either of such persons.

See orders of Calcutta High Court quoted in note to S. 343.

345. The Judge shall not allow any person to serve on the Jury, unless such person understands the language in which the evidence is given or interpreted.

Juror to understand the language in which evidence is given or interpreted.

346. The Jury shall appoint one of their number to be Foreman. It shall be the duty of such Foreman to preside in the debates of the Jury, to deliver the verdict of the Jury, or ask any information from the Court that may be required by the Jury. If a majority do not agree in the appointment of a Foreman, he shall be named by the Court.

Foreman of Jury.

347. The same Jury, if not objected to, may try, or the same Assessors may aid in the trial of, as many accused persons successively as to the Court shall seem expedient.

The same Jury or Assessors may try in succession several offenders.

348. Whenever, in the opinion of the Court, it may be proper and convenient that the Jury or Assessors should have a view of the place in which the offence charged is said to have been committed, or of any other place in which any other transaction material to the enquiry in the trial took place, an order shall be made to that effect, and the Jury or Assessors shall be conducted in a body under the care of an Officer of the Court to the place which shall be shown to them by a person appointed by the Court, and it shall be the duty of the Officer not to suffer any other person to speak to, or hold any communication with, any of the Jury or Assessors, and they shall, when the view is finished, be immediately conducted back into Court.

View by Jury or Assessors.

The Calcutta High Court condemned the proceedings of a Sessions Judge who permitted Assessors in a trial to visit the scene of the alleged offence without adopting the precautions provided by S. 348, and ordered certain of the witnesses to attend with the Assessors, and impressed upon the latter the necessity of orally examining the witnesses, if they deemed to do so, in the presence of the accused, who would be present.—Chutterdharee Singh, 5 W. R., 59.

349. When a trial is held in which the accused person, or one of the accused persons, is entitled to be tried by a Jury constituted under the provisions of Section 323 of this Act, the Court of Session* shall, three days at the least before the day fixed for holding such trial, cause to be summoned in the manner prescribed in

Mode of summoning and empannelling Jurors for a Jury constituted under Section 323.

* S. 13.

Section 336 such a number of Jurors of the races mentioned in Section 323 as is equal to the total number of Jurymen required for the trial, if so many of such races be on the Jury List of the District. The Court shall also, at the same time, in like manner, cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons shall have been summoned for Jury trials at that Session. The names of the persons to be summoned shall be drawn by lot, excluding those who have served within six months, unless the number cannot be made up without them. From the whole number of persons returned, the Jurors who are to constitute the Jury shall be taken by lot in the manner prescribed in Section 342, until a Jury, containing the proper number of the races mentioned in Section 323, or a number approaching as nearly thereto as possible, has been obtained. The Jurors shall be liable to the same objections as any other Jurors. If a Jury containing the requisite number of the races mentioned in Section 323 be not obtained, the accused person may elect to be tried by the Judge with the aid of Assessors; otherwise he shall be tried by the Jury obtained by the means aforesaid.

If prior to finding any of the Jury be unable to proceed with the trial.

350. If, in the course of a trial by Jury at any time prior to the finding, any Juror shall, from any sufficient cause, be prevented from attending through the trial, or if any Juror shall absent himself, and it shall not be possible to enforce his attendance, a new Juror shall be added, or the Jury shall be discharged, and a new Jury empannelled, and in either case the trial shall commence anew.

S. 354 provides the penalty for the non-attendance of a Juror without lawful excuse.

Verdict of guilty by less than the specified majority of Jury.

351. In any trial by Jury, if the accused person is found guilty by a majority consisting of a less number of the Jury than is specified in that behalf in Section 328 of this Act, or if the accused person be found not guilty by a majority consisting of a less number of the Jury than is therein in that behalf specified, the Jury shall be discharged, and in any such case as aforesaid there shall be a new trial before a Jury consisting entirely

CH. XXIII. S. 352.

of other Jurors, and the accused person may be remanded or held to bail for such new trial. If, on any new trial by Jury, the accused person shall not be found guilty by a majority consisting of such a number as aforesaid, he shall be acquitted.

Four out of five, or five out of seven, or six out of nine are legal majorities under S. 328, according as the Jury may consist of five, seven, or nine persons.

When, however, there is no verdict on one head of the charge, but one convicting the prisoner on another head, it would seem that the finding may be accepted.—See 3 W. R., 13 C. L.

When and how long Jury may retire for finding.

352. At the close of the trial, and after the Judge has summed up the evidence as hereinafter provided by Section 379 of this Act, the Jury may retire to consider their finding, and it shall be the duty of an Officer of the Court not to suffer any person to speak to or hold any communication with any member of such Jury. In any case in which a Jury shall be prepared to deliver their finding, the Judge shall ask the Jury whether they are unanimous, and if the Foreman or one of the Jury shall declare that they are not unanimous, the Judge may require such Jury to retire for further consideration. If, after such a period as the Judge shall consider reasonable, the Foreman or any one of the Jury shall declare that they are not unanimous, the Jury may deliver their verdict.

If a prisoner plead guilty a verdict should not be taken from a Jury.—6 W. R., 1 C. L.

In a trial for murder the Jury gave the following verdict:—"We have no doubt that the prisoner killed Nuddee Ghose; we think Nuddee Ghose gave no provocation; but we do not think it murder, because the prisoner had no object in killing him." The Calcutta High Court held that this was clearly not such a verdict as could have been received, and that the Jury were properly directed by the Sessions Judge to re-consider their verdict. The Court further refused to question the subsequent verdict of the Jury convicting the prisoner of murder.—Uckoor Ghose, 1 W. R., 50. The same Court held that a Sessions Judge acted irregularly in directing the Jury to consider their verdict, declaring certain prisoners guilty of theft, because he considered that from the evidence they were guilty of robbery. The Court ordered a fresh trial, remarking that the Jury were the sole judges of the credibility of the evidence, which would convert the theft into robbery, and, as they apparently disbelieved such evidence, their first verdict was proper, and should have been accepted.—Sakhawat Sheikh, 2 W. R., 13.

A Jury convicted a prisoner on the second head of a charge, acquitting him on the first. The Sessions Judge required them to re-consider their verdict, after which he was convicted on the first head of the charge. The Calcutta High Court held that the Judge had no power thus to control the Jury, since, having left the several charges to the Jury, it must be presumed that he considered that there was evidence in support of each of those charges, and it was for the Jury alone to convict or acquit on the several charges as they thought proper. The Sessions Judge should have recorded

the first finding of the Jury which was their verdict, and should have sentenced the prisoner accordingly.—Joy Krishto Ghosamee, 7 W. R., 22.

If a Sessions Judge differs from the finding of a Jury, he is not justified in passing a light sentence, which would have the effect of making that finding inoperative. He should either pass what he considers a proper sentence, for the offence of which the Jury has found the prisoner guilty, or should make a special reference for the orders of Government under S. 54 of the Code of Criminal Procedure.—3 W. R., 16 C. L.

If either of the Assessors be unable to proceed with trial.

353. If, in the course of a trial with the aid of Assessors, at any time prior to the finding, any Assessor shall, from any sufficient cause, be prevented from attending through the trial, the trial shall proceed with the aid of the other Assessor or Assessors. If all the Assessors are prevented from attending through the trial, the proceedings shall be stayed, and a new trial shall be held with the aid of fresh Assessors.

See following Section for the penalty for the non-attendance of an Assessor without lawful excuse.

Penalty for non-attendance of Juror of Assessor.

354. Any person summoned to attend as a Juror or as an Assessor, who shall without lawful excuse fail to attend as required by the summons, or having attended shall depart without having obtained the permission of the Court, shall be liable by order of the Court of Session* to a fine not exceeding one hundred Rupees, to be levied by the Magistrate of the District† by attachment and sale of any moveable‡ property belonging to such Juror or Assessor within the jurisdiction of the Court making the order, or in default of recovery of the fine by such attachment and sale, such Juror or Assessor may be imprisoned in the Civil Jail for the space of fifteen days, if the fine be not sooner paid.

* S. 13.

† Ss. 14, 18.

‡ S. 6.

An order fining an Assessor is not appealable. If good reason for non-attendance be shown, even after an order of fine be passed, the Judge should re-consider that order.—Gour Sharun Doss, 8 W. R., 83.

CHAPTER XXIV.—Ss. 355—358.

Of Subordinate Judges and Principal Sudder Ameens in the Presidency of Fort Saint George.

In the Regulations, these officers are respectively termed Assistant or Joint Criminal Judges and Native Criminal Judges. The change of designation is to be found in Act VII. of 1843 and Act XXIV. of 1836.

Criminal Jurisdiction and powers of punishment of Subordinate Judges and Principal Sudder Ameens.

355. The Subordinate Judges and Principal Sudder Ameens in the Presidency of Fort Saint George shall continue to exercise under this Act, subject to the provisions of the Indian Penal Code, the Criminal jurisdiction which they are competent to exercise under any law for the time being in force, and shall have the same powers of punishment as are given by this Act to an Officer exercising the powers of a Magistrate.

The following are the unrepealed laws relating to Subordinate Judges and Principal Sudder Ameens in the Presidency of Fort Saint George:—

Regulation II. 1827, S. 2.

Regulation VIII. 1827, Ss. 2 and 14, cls. 1 and 2, and S. 4, except as regards the application of Regulation X. 1816 to Criminal trials.—[See Schedule, Act XVII. of 1862.]

Regulation III. 1817, S. 3.

What cases Subordinate Magistrates may commit, and what cases they may refer to Magistrate.

356. Subordinate Magistrates of the first* and second* class in the Presidency of Fort Saint George shall commit to the Court of Session† any persons charged with offences triable exclusively by that Court, or shall, under such orders as the Sudder Court‡ shall from time to time issue, either commit to the Subordinate Judges or Principal Sudder Ameens the cases of persons accused of offences triable by such Subordinate Judges or Principal Sudder Ameens, or refer such cases for the orders of the Magistrate§ of the District, or other Officer exercising the powers‖ of a Magistrate. If the case be referred to the Magistrate of the District or other Officer as aforesaid, such Magistrate or other Officer shall examine the parties and witnesses, and shall proceed in all respects as if no proceedings had been held in any other Court.

* S. 22.

† S. 13.

‡ S. 19.

§ Ss. 14, 18.

‖ S. 16.

Unless expressly excluded by law, every thing said or done by any person, if relevant, is evidence against him, although it may be the examination of an accused person recorded by a Subordinate Magistrate in a case referred by him to the Magistrate of the District. The meaning of S. 356 is that the Magistrate should not decide the case without a regular trial before himself.—Madras High Court, 1863.

A Sessions Judge should not return to a Magistrate a case which the latter had full jurisdiction to decide. He should rather decide the case and point out to the Magistrate his error, for there is nothing in the law which authorizes a Sessions Judge to return a case to a Magistrate.—*Id.* 1863.

A Subordinate Magistrate, in a case to be referred by him, should prefer no charge against the accused person.—*Id.* 1863.

Subordinate Magistrate after trial may refer to Magistrate of the District.

357. If in any case tried by a Subordinate Magistrate of the first¶ or second¶ class in the Presidency of Fort Saint George

¶ S. 22.

in which the accused person is found guilty, such Magistrate shall consider the offence established against the accused person to call for a more severe punishment than such Magistrate is competent to adjudge, he shall record the finding and submit his proceedings to the Magistrate* of the District or other Officer exercising the powers of a Magistrate, and the Magistrate of the District or other Officer as aforesaid shall pass such sentence or order in the case as he may deem proper, and as shall be according to law. In any such case, the Magistrate or other Officer to whom the proceedings are submitted may examine the parties, and recal and examine any witness who shall already have given evidence in the case, and he may call for or take any further evidence.

* Ss. 14, 18.

This Section is somewhat similar to S. 277. On a reference made to the Government of Madras by the Acting Magistrate of the Madras District, asking whether, in cases referred by Sub-Magistrates of the 2nd class under S. 357 of the Code of Criminal Procedure, to the District Magistrate, for enhanced punishment, it is lawful for the District Magistrate to pass a sentence of whipping to be carried out by the Sub-Magistrate of the 2nd class in his own Division, when the offence is one for which whipping would be lawful if the case had been heard by an officer competent to pass sentence of whipping, and if lawful, whether such a course was contemplated by the Government in passing their Order, No. 466, April 1864, the following opinion was given by the Acting Advocate-General at Madras:—"The sentence passed under S. 357 of the Criminal Procedure Code is the sentence of the Magistrate of the District, and may be as to its nature and amount, 'such sentence or order in the case as he may deem proper, and as shall be according to law.' In all cases, therefore, where he might have awarded whipping if the charges had been originally tried by himself, he may award it on a reference from the Subordinate Magistrate." This opinion was communicated by order of the Government of Madras to all the Magistrates within that Presidency. A different construction has, however, been put by the Calcutta High Court on similar terms used in S. 277.—See note to that Section.

Cases committed for trial before Subordinate Judges and Principal Sudder Ameens.

358. In cases committed for trial before the Subordinate Judges or Principal Sudder Ameens in the Presidency of Fort Saint George, they shall be guided by the rules contained in this Act† for the trial of cases before the Magistrate, which are hereby made applicable to such cases. The Subordinate Judges and Principal Sudder Ameens may commit any case to the Court of Session‡ in which the evidence is such as to warrant a presumption that the accused person has been guilty of an offence calling for a more severe punishment than such Subordinate Judges or Principal Sudder Ameens are authorized to adjudge.

† See Ss. 248—256.

‡ S. 13.

A Subordinate Judge or a Principal Sudder Ameen may commit to the Court of Session, without taking any further evidence, any case that may have been committed to them by a Magistrate, whenever it shall appear from a perusal of the evidence already recorded that the accused has been guilty of an offence calling for such punishment as the Court of Session can alone award.—Madras High Court.

CHAPTER XXV.—Ss. 359—380.

TRIALS BEFORE THE COURT OF SESSION.

359. Except in the cases referred to in Section 172 of this Act, a Court of Session,* as a Court of Original Criminal Jurisdiction, shall not take cognizance of any offence but upon a charge preferred by a Magistrate or other Officer specially empowered under this Act, or under any other law to make commitments to such Court.

* S. 13.

Cognizance of offences by the Court of Session in original jurisdiction.

In every part of India, except in the Presidency of Fort Saint George only a Magistrate exercising the powers of a Magistrate [S. 16], or Subordinate Magistrate specially empowered by Government [S. 38], can make commitments to the Court of Session. In the Presidency of Fort Saint George, Subordinate Magistrates of the 1st and 2nd classes have the power of committing to the Court of Session any persons charged with offences triable exclusively by that Court.—[S. 356].

S. 172 enacts that "it shall be competent to a Court of Session to charge a person for any such offence" [*i. e.*, any offence under Ss. 161, 162, 164—171, 193—196, 199, 200, 205—211, 228, 463, 471, 475, 476, of the Indian Penal Code] "committed before it, or under its own cognizance, if the offence be triable by the Court of Session exclusively, and to commit or hold to bail, and to try such person upon its own charge. In such case the Court of Session shall have the same power of summoning and causing the attendance at the trial of any witnesses for the prosecution or for the defence which is vested in a Magistrate by this Act. Such Court may direct the Magistrate to cause the attendance of such witness on the trial."

The terms of S. 359 do not limit the power vested in a Sessions Judge by S. 435 to order a Magistrate either to commit or to enquire into any offence triable solely by the Sessions Court, in which he may have either discharged the person accused, or dismissed the case without enquiry.—Bhobisan Mahatoon, Suth. Rep., 1864, p. 3.

360. In every trial before a Court of Session† the prosecution shall be conducted by the Government Pleader or by some other Officer specially empowered in that behalf, and the complainant, if there be a complainant, shall be examined as a witness in the case.

† S. 13.

Every trial before Court of Session to be conducted by Government Pleader, &c.

For the rules regarding Government Prosecutions in Bengal, see note to S. 231.

361. A Court of Session‡ may direct the postponement of a trial, when it is satisfied that such postponement is proper and will promote the ends of justice.

‡ S. 13.

Postponement of trial.

If a trial has been postponed after some of the evidence has been taken, and the Sessions Judge presiding at that trial has vacated office without concluding it, his successor cannot proceed with the trial at that stage, but must commence it *de novo*.—Charroo and another, Suth. Rep., 1864, p. 32.

The Calcutta High Court [170, 1862] has ruled that it was not necessary for a Sessions Judge to postpone the trial of a case committed to him until the decision by a Civil Court on appeal of a case in which the forged documents forming the basis of the Criminal charge were uttered. The only question for his consideration was whether the committing officer had such jurisdiction to investigate the case as is required by law.

Commencement of trial.

362. When the Court is ready to commence the trial, the accused person shall be brought before it, and the charge shall be read and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried. If the accused person plead guilty, the plea shall be recorded, and the accused may be convicted thereon.

If a prisoner plead guilty, it is unnecessary to call for an opinion from the Assessors (5 W. R., 2 C. L.; 6 *Ibid*, 4), or a verdict from the Jury (6 W. R., 1 C. L.); but it may be sometimes necessary to proceed with the trial, as for instance when a person may be accused of having intentionally given false evidence by making statements which are contradictory, one of the other, and he may plead guilty of having falsely made one statement. Here the two statements may be both false; and because the prisoner has pleaded guilty to one charge he should not of necessity be acquitted of the other. Looking to the special nature of such charge, the prisoner ought not to be allowed to elect which statement he shall admit to be false: the fact should rather be tried, as under S. 362 it is optional with the Court to do.—8 W. R., 6 C. L.

After a prisoner has once pleaded to the charge, it is not competent to the prosecution to withdraw it. He is entitled to a trial, and a clear verdict of acquittal, if there is no sufficient evidence produced against him.—5 W. R., 4 C. L.

If the accused person plead guilty, it is not absolutely necessary to record the evidence for the prosecution [Calcutta High Court, 359, 1862]; but the Sessions Judge may record it if he thinks proper.—[*Id.* 810, 1863]. The accused person should not be examined by the Sessions Judge *immediately* after he has been called upon to plead, if his plea be "not guilty."—3 Agra, 85.

When an accused person pleads guilty, and is forthwith convicted by the Sessions Judge, the following finding should be used:—The accused ——— pleads guilty of ———, and the Court directs, &c., &c.—8 W. R., 21 C. L.

Refusal to plead, or plea of claim.

363. If the accused person shall refuse to plead, or shall claim to be tried, the Court shall proceed to try the case, taking all the evidence that is forthcoming.

Provisions relating to examination of parties, &c., in trials before Magistrate to be applicable to trials before Court of Session.

364. The provisions of Sections 195, 196, 197, 198, 199, and 200, of this Act, relating to the examination of parties and witnesses, the mode of recording evidence, and the correction, attestation, and interpretation thereof in trials before the Magistrate, shall be applicable to trials before the Court of Session* under this Chapter.

* S 13.

CH. XXV. S. 364.

A sentence passed by a Court of Session was quashed, and a new trial was ordered, because the evidence of the witnesses in the case had not been recorded in the presence of the accused persons, their depositions in the cases of other prisoners having been merely read over in the Sessions Court, and their identification of the persons then under trial recorded.—Calcutta High Court, Gopal Chowbey, Feb. 9th, 1863.

A Sessions Judge is bound to record the evidence of each witness *de novo*. He is not competent to accept to any extent the evidence recorded in the Magistrate's Court even if acknowleged by the witnesses.—5 Agra, 245. Because the evidence has been fully taken on the trial of other persons concerned in the offence charged, a Sessions Judge, in the trial of another person, should not examine the witnesses more briefly, or refer to the record of the previous trial for supplying what was found to be wanting. Every trial must be complete in itself.—Kishen Doyal Aheer, 6 W. R., 7. Nor is it admissible to read to a witness his deposition on some former trial. In every trial, no matter how often the case has been before the Court, the witnesses must be examined *de novo* in the same manner as if the case were entirely new, and the witnesses had never been examined before.—Sheikh Kyamut, Suth. Rep., 1864, p. 1; Affazzooddeen, *Ibid*, p. 13.

Witnesses should on no account be allowed to give hearsay evidence, as it is impossible to remove its effect from the mind of a Jury.—Kali Churn Gangooly, 7 W. R., 2: Petambur Sirdar, *Ibid*, 25. A Sessions Judge is not bound to record the evidence of such witnesses as, from the record of the preliminary enquiry held by the Magistrate, may appear to be irrelevant or mere hearsay.—3 W. R., 11 C. L. Evidence of the bad character of the prisoner is not admissible on his trial (Beharee Dosadh, 7 W. R., 7): nor as to his having been previously convicted.—Thakoor Doss Chootar, *Ibid.*

A Sessions Judge should, from time to time, during a trial, refer to the deposition of the witnesses before the Magistrate to compare them with the deposition as made before him, so that he may be in a position to put questions on cross-examination, the answers to which may clear up discrepancies, or elicit facts favorable to the prisoner (Bindabun Bowsee, 5 W. R., 54); but evidence taken before the Magistrate is not evidence before the Sessions Court (except under S. 369), and should not be put to a Jury unless it is contradictory.—Bheekoo Singh, 7 W. R., 108.

Ss. 210, 211 apply to trials before Sessions Courts. By S. 210 it is enacted that "it shall be competent to the Court of Session at the time of trial to instruct the Magistrate in like manner [*i. e.*, as in S. 209] to tender a pardon to one or more persons supposed to have been directly or indirectly concerned in or privy to any such offence [*i. e.*, any offence specified in Column 7 of the Schedule annexed to the Code of Criminal Procedure, as triable by the Court of Session] with the view of obtaining his or their evidence on the trial." S. 210 declares that "if it shall appear to the Court of Session at the time of trial that any person who shall have accepted an offer of pardon has not conformed to the conditions under which the pardon was tendered, either by wilfully concealing anything essential, or by giving false evidence or information, it shall be competent to such Court to direct the commitment of such person for trial for the offence in respect of which the pardon was tendered."

The Government of Bengal [August 6th, 1865] has ordered, under Ss. 196 and 364, that the evidence of witnesses in trials before the Courts of Session should be taken down by the Judge with his own hand and in his own vernacular language, unless he be prevented by any sufficient reason from taking down the evidence of any witness, in which case he should record the reason of his inability to do so, and should cause the evidence to be taken down in writing from his dictation in open Court.

The depositions in which there may be any doubt as to the exact meaning of an expression used, and in which the doubtful expression has an important bearing on the offences with which the prisoner is charged, it is expedient to transcribe, in Roman characters, the words actually used, in order that the Superior Court, on the matter coming before it, may be in a position, without fear of error, to determine the exact signification of the

words used, and to give them their proper weight. Should an instance occur in which a foreign language is used, or the evidence may be delivered in a dialect to which the Judge may not be accustomed, an interpreter should be employed in the manner prescribed by S. 431.—Calcutta High Court, Cir. 9, 1865.

365. If any witness refuse to answer any question which shall be put to him, and shall not offer any just excuse for such refusal, the Court may commit such witness to custody for such reasonable time as it may deem proper, unless he shall in the meantime consent to be examined and to answer. In the event of such witness persisting in his refusal, he may be dealt with according to the provisions of Section 163 of this Act.

Witness refusing to answer may be committed to custody.

See note to S. 192.

366. The examination of the accused person before the Magistrate shall be given in evidence at the trial. The attestation of the Magistrate shall be sufficient *primâ facie* proof of such examination, and such attestation shall be admitted without proof of the signature to it, unless the Court shall see reason to doubt its genuineness.

Examination of accused before the Magistrate to be evidence at the trial.

Proof of such examination.

This should be put in and read as a part of the case for the prosecution, before the accused person is called upon to enter on his defence. It should be detached from the record of the preliminary enquiry, and attached to that of the trial.—Calcutta High Court, Cir. 11, 1867.

"Examination"—"attestation."—S. 205 requires that the examination of the accused person, including every question put to him, and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers; and when the whole is made conformable to what he declares is the truth, the examination shall be attested by the signature of the Magistrate, who shall certify under his own hand that it was taken in his presence and in his hearing, and contains accurately the whole statement made by the accused person. But in the case of an accused person who *confesses*, the Magistrate is to require him "to give an account of the facts and circumstances in detail, and shall examine thereupon in the same manner as if he were a witness."—S. 203.

Where these forms had not been observed, the Calcutta High Court refused to admit the examination of the accused person as evidence, observing that this was no technical objection, since it is obviously necessary that before a man can be criminated on his own statement under examination, the Court should be satisfied that such statement has been deliberately made and recorded; that being recorded, it has been shown or read to the accused, so that he might be assured that his words have been correctly taken down; and it is proper that these important circumstances should be attested by the signature of the Magistrate following the certificate required by S. 205, which is to be given under his own hand.—Mussamut Niruni, 7 W. R, 49.

The Bombay High Court has also required a strict observance of the law regarding the manner in which the examination of an accused is to be recorded, and has refused to receive as evidence examinations which are not shown to have been taken as directed by S. 205, but the Court has remanded such cases to have taken the evidence of the writer of the examination, or other person who was present, that the examination was given freely, and

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was not elicited by threats or promises. Much stress was laid on the absence of any full record of the questions put, but it was held that the form of the questions was immaterial, even though it assumed the prisoner's guilt.—Timmi, 2 Bombay, 131: Kalla Lakhmaji, *Ibid* 419; and the cases reported in pages 420, 421, 422.

The Calcutta High Court (Cir. 11, 1867) has also held that a defective examination should not be placed with the record of the trial, unless the prosecution should take exception to the order of the Court refusing to admit it, in which case, if the proceedings be submitted to the High Court, it may be transmitted separately with a Memorandum of the Judge's order of rejection.

A confession made before a Magistrate, but retracted before the Sessions Court, is still evidence against the prisoner, and sufficient for his conviction, provided that the Court is satisfied that it was voluntarily made and is genuine.—Sreemotee Mongola, 6 W. R., 81: Jhuree, 7 W. R., 41: Reg. *v.* Mussamut Jema, 8 W. R., 40. It is not necessary that a confession should be corroborated by other evidence.—Runjeet Sonthal, 6 W. R., 70.

The statement made by an accused person must be taken in its entirety. In a case in which the only evidence against a prisoner was his statement that he accompanied the dacoits for a short distance, but turned back almost immediately, and had nothing to do with the dacoits, and did not even know that such an offence was in contemplation, it was held that this amounted to no evidence, and he was acquitted.—Greedharee Manjee, 7 W. R., 39; see also Sheikh Boodhoo, 8 W. R., 38; also Krishto Mundul, 7 W. R., 7.

Court may summon necessary evidence.

367. It shall be in the discretion of the Court, at any stage of a trial, to summon and examine any witness whose evidence it shall consider essential to the just decision of the case. The Court may also examine as a witness any person in attendance, although not summoned as a witness.

This does not empower a Sessions Judge to remand a case to a Magistrate for re-investigation of the charges on which certain persons have been committed for trial.—8 W. R., 23 C. L.

In concurrence with the Agra Sudder Court, the Judicial Commissioner of the Punjab has ruled that a Court of Session may direct further enquiry on any point on which the preliminary enquiry held by the Magistrate may appear to have been defective. A Sessions Judge can summon a witness directly or through the Committing Magistrate, the latter course being preferable.

The records of proceedings of the Police should not be placed with the record of a Criminal case and sent to the Sessions Court. If the Sessions Judge requires evidence as to facts elicited by the Police, he should summon the Police Officer with the daily record of his proceedings kept under S. 154, and he can examine that officer, giving him an opportunity, after the record has been proved to be what it is represented to be, and, if necessary, to refresh his memory by looking at it, and to tell the Court what it contains. By this means the Police record will become legal evidence.—4 W. R., 8 C. L.

Evidence of Medical witness.

368. The Court shall receive as *primâ facie* evidence the examination of a Civil Surgeon or other Medical witness taken and duly attested by the Magistrate. Provided that it shall be competent to the Court to summon such Civil Surgeon or other Medical witness, if it shall see sufficient cause for doing so.

If relied on by the prosecution, this examination should be put in and read in Court before the accused is called upon for his defence. It should also be detached from the record of the preliminary enquiry, and attached to that of the trial.—Calcutta High Court, Cir. 11, 1867.

The *Report* of a Medical Officer is no legal evidence. He should be examined on oath.—6 W. R., 3 C. L.

Magistrates should be required invariably to record the evidence of the Medical officer, before committing to the Court of Session any case regarding an offence affecting the human body [Chapter XVI., Penal Code]; for the omission to record this evidence might very possibly lead to the acquittal of an accused person in the Sessions Court, if through sickness, death, or unavoidable absence of the Medical officer, his attendance cannot be procured before that Court.—2 W. R., 6 C. L.

Examination of witness taken and attested by Magistrate when admissible.

369. The examination of a witness taken and attested by the Magistrate in the presence of the accused person may be given in evidence, if the witness be dead, or the Court be satisfied that for any sufficient cause his attendance cannot be procured.

This power should be exercised with great caution, and only under exceptional circumstances. The Judge must satisfy himself that the witness is either dead, or that for any *sufficient* cause his attendance *cannot* be procured. It is preferable to adjourn [S. 377] the trial of heinous offences to secure the personal attendance of any important witnesses who may have absented themselves.—1 W. R., 6 C. L.

In order to constitute a sufficient cause for the non-attendance of a witness, there must be some impossibility, moral or physical, of his being produced. It is not sufficient cause for the absence of a Police Inspector that he is engaged on other important duties. If he cannot attend on the day fixed for the trial, and his evidence is indispensable, the trial must be postponed.—3 W. R., 14 C. L. Unless the attendance of a witness cannot by reasonable efforts be obtained, his deposition before a Magistrate is inadmissible as evidence before the Sessions Court. Enquiries should be made, and evidence taken, as to whether a sufficient cause existed for his absence. Evidence on this point should be recorded in the same manner as evidence in any other part of the case.—Itwaree Dome, 6 W. R., 83 : Bheekun Dass, 7 W. R., 114.

A complainant is a witness within the terms of S. 369.—3 W. R., 18 C. L. If the examination of a witness before a Magistrate be admitted as evidence before the Sessions Court, it should be read before the prisoner is called upon for his defence, and should be detached from the record of the preliminary enquiry, and attached to that of the record.—Calcutta High Court, Cir. 11, 1867.

Report of Chemical Examiner admissible in evidence.

370. Any document purporting to be a report from the Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any criminal trial, or in any preliminary enquiry relating thereto, shall be received in evidence at a trial by the Court of Session,* if it bear the signature of such Examiner, and no proof of such signature, or that the person signing holds such office, shall be requisite,

* S. 13.

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unless the Court shall see reason to doubt the genuineness of the document.

If put in as evidence by the prosecution, the report from the Chemical Examiner should be read before the prisoner is called upon for his defence, and should be detached from the record of the preliminary enquiry, and attached to that of the trial.—Calcutta High Court, Cir. 11, 1867.

371. The declaration of a deceased person, whether it be made in the presence of the accused person or not, may be given in evidence, if the deceased person at the time of making such declaration believed himself to be in danger of approaching death, although he entertained, at the time of making it, hopes of recovery.

Dying declaration.

It is well to note this Section in connection with Act II. of 1855, S. 29, which it no doubt supersedes. "Where dying declarations are evidence, they shall be received, if it be proved that the deceased was, at the time of making the declaration, and then thought himself to be, in danger of approaching death, though he entertained, at the time of making it, hope of recovery."

A dying declaration put in as evidence for the prosecution should form part of the record of the trial.—Soyambur Singh, 9 W. R., 2.

A Magistrate recording a dying declaration should question the deponent as to whether he believes himself to be in danger of approaching death [3 W. R., 3 C. L.], but the omission of any such information would not render the deposition inadmissible, if it has been recorded in the presence of the accused. It would not be treated as a dying declaration, but it may, under S. 369, be admitted as evidence.—4 W. R., 3. C. L. The Agra Sudder Court (22nd May, 1863) held that as a person was dangerously wounded and obviously dying, his declaration having been made only six hours previous to his decease, it may reasonably be presumed that, at the time of making it, he believed himself to be in danger of approaching death. The declaration was accordingly received as evidence.

In the case of a person charged with murder and rape, in which the Sessions Judge, in addressing the Jury, had stated that the dying declaration was admissible as evidence on the charge of murder, but not so on the charge of rape, and that, when considering that charge, they were to attach no weight to that evidence, the Calcutta High Court, admitting that this rule was in perfect accordance with the English law of evidence as applicable to Criminal cases, held that the Judge was wrong in this direction to an Indian Jury. The Court stated:—"Our reason for thinking that this evidence ought to have been admitted is, that no possible reason can be given for its admission in the case where the death of the party making the statement is the subject of the enquiry, which does not apply with equal force to its admissibility in the present case. The ground on which dying declarations are admissible is that, when they are made, the declarant is in a condition in which, according to the experience of mankind, it is not less likely that what he says is true than if it had been said before a Magistrate under the sanction of an oath and in presence of the prisoner. It is, therefore, put on a level with a deposition technically so called, which is admissible in case of the deponent's death or absence from illness. But this has nothing to do with the nature of the crime to which the evidence relates: it is just as applicable to one crime as another.

"It has been said that Courts have been driven to accept this evidence by the necessity of the case; the necessity arising from this, that the injured person, who might be the principal witness against the prisoner, is dead. We may remark that such necessity, as it is called, is not a ground for receiving evidence which ought, on other grounds, to be excluded; nor is it the reason why this evidence is admitted; but even if it were so, that

necessity is just as likely to exist where the deceased person has been robbed, or raped, or assaulted, as where he has been murdered.

"Considering, therefore, as we do, that dying declarations are a species of evidence, which, on the whole, are likely to be useful in leading Juries and Courts of Law to a right conclusion on the facts before them, and that the principle on which they are admissible in cases of murder is applicable to their admissibility in other cases, we think that the Sessions Judge was wrong in his direction to the Jury, and that the evidence in question was admissible on the charge of rape."—Bissorunjan Mookerjee, 6 W. R., 75.

Defence.

372. When the case for the prosecution has been brought to a close, the accused person shall be called upon to enter upon his defence, and to produce his evidence.

There is nothing in the law which prohibits a written defence. If presented, such should be received.—2 Agra, 356. Sessions Judges should put on record any statement that the accused person may make, on his being called upon to enter upon his defence; and if no statement be made by the accused, the fact should be noted by the Judge.—*Id.* Cir. 6, 1863.

S. 372 in no way interferes with S. 210, which empowers a Court of Session, *at the time of trial*, to instruct a Magistrate to tender a pardon. These words undoubtedly mean any time during trial, and as a trial is not over until the defence has been taken, and evidence, if need be, in support of it recorded, it follows that a pardon may be tendered even after a defence has been entered upon.—8 W. R., 13 C. L.

When accused person may be examined.

373. The Court, at the close of the evidence on behalf of the accused person, if any evidence is adduced on his behalf, or otherwise at the close of the case for the prosecution, may put any question to the accused person which it may think proper. It shall be in the option of the accused person to answer such question.

Any questions put to an accused, and all answers given by him, should be recorded by the Judge.—Agra Sudder Court, Cir. 6, 1863.

A Sessions Court is not competent to subject a prisoner to severe cross-examination. The discretion given by law is not for the purpose of driving a prisoner to make statements criminatory of himself. It can only be properly used for ascertaining from a prisoner how he may be able to meet facts in evidence standing against him, so that these facts should not stand against him unexplained.—Virabudra Gaud, 1 Madras, 199.

Under S. 244, a Court is competent, at any stage of the trial, to amend or alter the charge.

S. 246 enacts that "if the amendment or alteration" [of a charge] "is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused person in his defence, the Court may either direct a new trial, or suspend the trial for such period as may be necessary to enable the accused person to make his defence to the amended or altered charge; and, after hearing his defence, may further adjourn the trial, to admit of the appearance of any witness, whose evidence the Court may consider to be material to the case, or whom the accused person may wish to be summoned in his defence." Although an accused person is not, of right, except as thus provided, entitled to have a fresh witness summoned, still under S. 367 it is "in the discretion of the Court, at any stage of the trial, to summon and examine any witness whose evidence it shall consider essential to the just decision of the case. The Court may also examine as a witness any person in attendance, although not summoned as a witness," and "the accused person shall be allowed to examine any witness not previously named by him, if such witness is in attendance."—S. 375.

When accused may address the Court.

374. The accused person or his Counsel or Agent may, at his option, address the Court at the close of the case for the prosecution, or at the close of any evidence that may be adduced on his behalf, or if any question shall be put to the accused person by the Court, after such question shall have been so put.

"Agent" This evidently refers to S. 432, which enacts that "every person charged before any Criminal Court with an offence may of right be defended by Counsel or authorised Agent."

If he be not a Pleader or Mookhtar duly qualified under Act XX. of 1865, the permission of the Judge is necessary for his employment.—Act XX. of 1865, S. 40.

Witness for the defence.

375. The accused person shall be allowed to examine any witness not previously named by him if such witness be in attendance, but he shall not be entitled of right to have any other witness summoned than the witnesses named in the list delivered to the Magistrate by whom he was committed or held to bail for trial, except as provided in Section 246 of this Act.

A Sessions Judge is not bound to record the evidence of witnesses which may appear, from the record of the preliminary enquiry before the Magistrate, to be irrelevant or mere hearsay. If any request made by a prisoner for the examination of witnesses be disallowed, the reason for such order should be clearly stated in the judgment, so as to satisfy the Superior Court should any appeal be preferred.—3 W. R., 12 C. L.

Prosecutor's right of reply.

376. If any evidence is adduced on behalf of the accused person, or if he answers any question put to him by the Court, the prosecutor, or the Counsel or Agent for the prosecution, shall be entitled to a reply..

See note to S. 374.

Adjournment.

377. The Court may in its discretion, from time to time, adjourn the trial as may be necessary.

If, during the adjournment of a trial, the Sessions Judge who has held the trial has vacated his office, his successor must commence the trial *de novo*.—Charroo, Suth. Rep. 1864, p. 32.

Ss. 350 and 353 provide for the absence, respectively, of a Juror or Assessor during a trial.

The Calcutta High Court [170, 1862] has declared that it was not necessary for a Sessions Judge to postpone the trial of a case until the decision by a Civil Court on appeal of a case in which the forged documents forming the basis of the criminal charge were uttered. The Court held that the only question for consideration was, whether the committing officer had such jurisdiction to investigate the case as is required by law. The same Court has issued similar instructions in a case of intentionally giving false evidence under S. 193, Penal Code.—3 W. R., 21 C. L.

S. 348 lays down the procedure to be followed when, in the opinion of the Court, it is convenient that the Jurors or Assessors should have a view of the place in which the offence charged is said to have been committed, or of any other place in which any other transaction material to the enquiry in the trial took place.

Jury or Assessors to attend at adjourned sitting.

378. In the event of the adjournment of a trial by Jury or with the aid of Assessors, the Jury or Assessors shall be required to attend at the adjourned sitting, and at every subsequent sitting until the conclusion of the trial; and any Juror or Assessor who shall without lawful excuse fail so to attend, shall be liable to the penalty* prescribed in Section 354 of this Act, and such penalty shall be enforced in the manner therein prescribed.

* Fine up to Rs. 100.

In the event of a Juror or Assessor being absent, the Court should proceed as laid down in S. 350 or S. 353.

If, during the adjournment of a case, the Sessions Judge who may have held the trial has vacated office, his successor must commence the trial *de novo*.—Charroo, Suth. Rep. 1864, p. 32.

Of verdict of Jury.

379. In a trial by Jury, the Judge shall sum up the evidence on both sides, and the Jury shall then deliver their finding upon the charge. A statement of the Judge's direction to the Jury shall form part of the record. In trials not by Jury, the ground of the Judge's decision shall be recorded.

In the trial of cases in which offences are charged, some of which should be tried by Jury [S. 322], and others with the aid of Assessors [S. 324], it has been the practice in Sessions Courts in Bengal that the Judge should take the verdict of the Jury on the charges relating to offences, which they are competent to try, and that he should then regard the Jurors as Assessors and take their opinion [S. 324] on the other charges. In such a case, both a statement of the Judge's direction to the Jury, and the ground of his decision, should form part of the record. The Calcutta High Court has never expressed any opinion on this procedure, which has, in several cases, come before it as a Court of Appeal.

"At the close of the trial, and after the Judge has summed up the evidence as hereinafter provided by S. 379 of the Act, the Jury may retire to consider their finding, and it shall be the duty of an officer of the Court not to suffer any person to speak to, or hold any communication with, any member of such Jury. In any case in which the Jury shall be prepared to deliver their finding, the Judge shall ask the Jury whether they are unanimous, and if the Foreman or one of the Jury shall declare that they are not unanimous, the Judge may require such Jury to retire for further consideration. If, after such period as the Judge shall consider reasonable, the Foreman or any one of the Jury shall declare that they are not unanimous, the Jury may deliver their verdict."—S. 352. See also note to that Section.

Every person charged with an offence, who is declared not guilty, is entitled to an acquitttal. The Calcutta High Court [348, 1863.] held that a Sessions Judge acted irregularly in discharging certain persons, without first obtaining the verdict of the Jury acquitting them.

If there is no evidence against a prisoner, it is the duty of the Judge to direct the Jury to acquit him. He should not leave it to the Jury to say whether the prisoner is guilty or not guilty.—Chand Bagdee, 7 W R, 6: Greedharee Manjee, 7 W. R., 39.

A Sessions Judge should state with exactness and precision the evidence against each individual prisoner and the manner in which it is supported. The degree of minuteness with which this need be done will depend on the circumstances of each case: but it should at least appear that there was something which proved, or intended to prove, every thing that made up the charge, the weight or credit to be given to such evidence being usually left to the Jury, though it is quite proper for a Judge to assist them with his advice. The Judge should be careful to sum up the evidence both for and against the prisoners, and to point out to the Jury the principal points in the evidence and how far they are in favor of, or against, the prisoner.—Kodai Kahar, 5 W. R., 6; Johur Manjee, *Ibid* 17; Bolakee Koormee, 6 W. R., 72; and also see 8 W. R., 5 C. L. In the case of Choonee (5 W. R., 13) the Calcutta High Court remarked that it would have been well if the Judge had pointed out more strongly to the Jury the weakness of the evidence and the possibility of the deed having been committed by other parties; but the Court added that it could not say that this omission amounted to positive misdirection, or that there was such a total failure of evidence as amounted to a want of legal evidence to uphold the conviction.

In warning a Jury not to disbelieve a mass of otherwise consistent evidence, because, on one or two minor and immaterial points, the witnesses made different statements, the Sessions Judge was held to have exercised a wise discretion. Such a warning does not amount to a misdirection.—Bustee Khan, 1 W. R., 17.

To omit to point out to a Jury the danger of relying on the uncorroborated evidence of accomplices has been held to amount to a misdirection.—Elahee Buksh, 5 W. R., 80; Khootub Sheikh, 6 W. R., 17; Nowab Jan, 8 W. R., 19. It is not sufficient simply to tell a Jury to consider whether the evidence of an accomplice was strongly corroborated as to the prisoners, as that would be to ask them to consider a question which, it is certain, no Native Jury in the Mofussil would understand. It is the duty of the Judge to go through the history of the crime as related by the accomplice, to point out any independent evidence proving facts showing that the prisoners were, or must have been, present at, or cognizant of, the murder. If such facts are proved, they would corroborate the story of the accomplice. But it would not be enough that the evidence should disclose a state of facts consistent with the possibility of the truth of the accomplice's story. If the state of facts proved *is equally consistent with*, and capable of receiving a reasonable and natural explanation on the hypothesis of the prisoner's innocence, *those facts, standing alone, would be no evidence of the truth* of the accomplice's story.—Karoo and others, 6 W. R., 44.

In summing up a case to a Jury, a Sessions Judge may express his own opinion of the guilt or innocence of the prisoner under trial, provided that he also tells the Jury that the decision rests with them, and that they should decide as they think proper.—Abdool Juleel, Suth. Rep. 1864, p. 5; Shama Khankee, 7 W. R., 22. See also the remarks of Sir Barnes Peacock, C. J., in the case of Elahee Buksh, 5 W. R., 87.

It is contrary to law for a Judge to read over to a Jury a charge already delivered in another case (Mahadeo, Suth. Rep., 1864, p. 15); nor is it competent for him to read over the opinions expressed by a Judge and Jury in a previous case, since such a proceeding must tend to prejudice the minds of the Jury in the case under trial.—Soobrattee Sheikh, 6 W. R, 2. The previous conviction of the prisoner should not be alluded to by a Sessions Judge in his charge to the Jury, but it should be considered by the Judge in determining the punishment to be awarded.—Mohabur Singh, 6 W. R., 64, and 6 W. R., 2 C. L.

380. If the accused person is acquitted, the Court shall record a judgment of acquittal. If the accused person is convicted, the Court shall proceed to pass sentence upon him according to law. Provided that if the Court pass sentence of death, the sentence shall not be

Acquittal or conviction.

executed without the confirmation of the Sudder Court.* If the accused person shall be convicted of an offence which by the Indian Penal Code is punishable with death, and the Court shall sentence such person to any punishment other than death, the Court shall state the grounds upon which it remitted the punishment of death in the statement of trials to be periodically submitted to the Sudder Court,* as hereinafter† required, under the head of "Sentences passed upon the accused persons."

CH. XXV. S. 380.

* S. 19.

† S. 387.

For the rules regarding the finding, judgment, and sentence, see the following Chapter.

A Sessions Judge is bound to pass some sentence, however slight, on a person duly convicted. He has no authority merely to "warn and discharge" a convict, as the power of remitting sentences rests solely with Government [S. 54.]—Calcutta High Court, 564, 1865.

A Sessions Judge cannot discharge a prisoner who has been duly convicted, because he thinks that the imprisonment undergone during trial is a sufficient punishment. A nominal punishment should be passed in such a case. —8 W. R., 9 C. L. Because the extreme sentence of imprisonment has been already passed on the prisoner in another case, he should not be discharged. The Calcutta High Court (5 W. R., 10 C. L.) held that the trial should have been postponed until the result of the appeal preferred in the other case was known, and inasmuch as the sentence passed by the Sessions Court had been reduced, and the prisoner, if again convicted, could receive an additional sentence, the trial of the second case was ordered.—See also 8 W. R., 18 C. L.

If a Sessions Judge find that a prisoner is not guilty of an offence, he should record a formal finding of acquittal, and order his discharge. He should not refuse to discharge a prisoner, because he considers that security for future good conduct should be taken by the Magistrate.—Byha Wullud Soorjim, 1 Bombay, 91.

A Sessions Judge should not pass a light or nominal sentence, because he considers that the verdict of a Jury is erroneous. It is rather his duty to consider what is a proper sentence for the offence of which the Jury have convicted the prisoner. If he has strong reasons for dissenting from such verdict in any case, he should, after passing sentence, make special reference to the High Court for the orders of Government under S. 54, Criminal Procedure.—Calcutta High Court, 677, 1865

There being a deliberate attempt to take life proved against a prisoner convicted of murder, the Calcutta High Court [1095, 1864,] informed the Sessions Judge that he should have passed sentence of death. The mere absence of previous ill-feeling and apparent motive do not form sufficient grounds for remitting capital punishment on a man convicted of the murder of his wife.—2 W. R., 6 C. L. Nor is it proper to remit that punishment merely because there were no eye-witnesses to the murder. Under such a rule, no sentences of capital punishment would ever be passed on any persons convicted of murder on circumstantial evidence.—2 W. R., 19 C. L.

The character borne by a prisoner convicted of murder is no valid reason for remitting a sentence of death (6 W. R., 4 C. L.); but the Calcutta High Court remitted a capital sentence on consideration of the youth of the convict and the uncertainty as to the circumstances under which the offence was committed.—Karroo and others, 6 W. R., 44.

Where a person was convicted of murder committed while "running a-muck," sentence of death was remitted on the ground that the prisoner's mind was not in its normal state, and that this was a case very different from cases of deliberate murder.—Bissonath Bunneea, 8 W. R., 53.

Where a person believing that another was a diviner, and that by killing him the life of his own sick child might be saved, did kill him, sentence of

CH. XXVI. S. 381.

death was remitted. The Court remarked that some distinction must be made between such cases and cases in which a deliberate murder has been committed for baser motives, and that, as the law has laid down two different degrees of punishment for the offence of murder, this was not a case in which the severer penalty should be imposed.—Ooram Sangra, 6 W. R., 82. See also case of Bishendharee Kahar, 7 W. R., 100.

When there was no intention to cause death, but merely a reckless assault with a weapon which inflicted a bodily injury likely, in the ordinary course of nature, to cause death, *viz.*, a club of a very lethal character, a sentence of death was held not to be a proper sentence, and was remitted.—Khoaz Sheikh, 5 W. R., 20. See also case of Sobah Seikh Gorman, Suth. Rep., 1864, p. 2.

The Calcutta High Court requires (Cir., March 11th, 1863) that in all cases tried by Jury, Sessions Judges shall, in the periodical statements submitted by them, state whether such verdict has their concurrence, and whether, in their opinion, the evidence in the case warranted the particular finding.

CHAPTER XXVI.—Ss. 381—387.

FINDING, JUDGMENT, AND SENTENCE.

S. 11.

What the judgment is to specify.

381. When the trial in any Criminal Court* is concluded, the Court, in passing judgment, if the accused person be convicted, shall distinctly specify the offence of which, and the Section of the Indian Penal Code under which, he is convicted ; or if it be doubtful under which of two Sections the offence falls, shall distinctly express the same, and pass judgment in the alternative, according to Section 72 of the said Code.

S. 72, Penal Code, declares that in such a case "the offender shall be punished for the offence for which the lowest punishment is provided, if the same punishment is not provided for all.

A form of alternative finding is given in cl. 5, S. 382. That, however, points only to cases contemplated by Ss. 423,424. The Calcutta High Court has held that if a witness before a Magistrate has deposed that he saw a murder being committed, and before the Court of Session that he never saw any thing of the kind, he may be convicted of having intentionally given false evidence, even though it be doubtful which of those statements be false, the finding being in the alternative form given in cl. 5, S. 382, but the sentence should, in accordance with S. 72, Penal Code, be under S. 193, rather than under S. 194.—Mussumat Zameerun, 6 W. R., 65.

There is no review of a judgment passed by a Criminal Court; but if, before a judgment has been recorded, the attention of the Court be called to any matter showing that there is an error or mistake in the judgment pronounced, the Court may correct such error or mistake, and it may also correct clerical errors in judgments after they have been recorded.—Godai Raout, 5 W. R., 61.

In passing sentence on a Police Officer, a Magistrate should not order his dismissal, since such forms no part of a judicial sentence, being an execution order.—Chunder Coomar Sen, 5 W. R., 4.

Form of finding and sentence.

382. The finding and sentence shall be recorded in one of the following forms, or to the same effect :—

The finding should correspond with the charge.—2 W., R. 21 C. L. A translation should invariably be recorded.—Ruttomjee Bhookon, 1 Bombay, 17. "When any person shall be sentenced to transportation, the Court passing the sentence shall not specify in its sentence the place to which such person shall be sent for the purpose of undergoing that sentence."—S. 50. "When a person shall be sentenced to death, the sentence shall direct that such person be hanged by the neck until he is dead."—S. 53.

In cases of culpable homicide not amounting to murder, the finding should specify the particular degree of that offence.—Calcutta High Court, Cir. 6, 1863; and 2 W. R., 11 C. L.

Where there are several heads of the charge, all being different degrees of a criminal act, thus, murder, culpable homicide not amounting to murder, voluntarily causing grievous hurt, and the prisoner be convicted of one of the higher offences, it is unnecessary to record a finding of guilty on each of the lesser offences.—See Calcutta High Court's Cir. 16, 1864.

When the accused person pleads guilty, and is convicted forthwith by the Sessions Judge, the following forms are inapplicable. The more appropriate form would be:—The accused A. B. pleads guilty of C. D., and the Court directs, &c.—8 W. R., 21 C. L.

In trials by Jury :—

When the Jury are unanimous :

The Jury are unanimous in finding that Z is guilty of the offience specified in the charge, namely, that Z has waged war against the Queen, and has thereby committed an offence punishable under Section 121 of the Indian Penal Code ; and the Court directs that the said Z be [*sentence.*]

2*nd.*—The Jury are unanimous in finding that Z is not guilty of the offence specified in the charge, namely, that Z has waged war against the Queen, and has thereby committed an offence punishable under Section 121 of the Indian Penal Code ; and the Court directs that the said Z be discharged.

When the Jury are not unanimous, but such a majority as is required by Section 328 of this Act concur in finding the accused guilty :

3*rd.*—A majority (stating the number, consisting of four out of five, or five or six out of seven, or six, seven, or eight out of nine, as the case may be) find that Z is guilty of the offence specified in the charge, namely, that Z has, with the intention of inducing the Honorable A. B., a Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such Member,

and that he has thereby committed an offence punishable under Section 124 of the Indian Penal Code. The Court directs that the said Z be [*sentence.*]

When the Jury are not unanimous, but such a majority as is required by Section 328 of this Act concur in finding the accused not guilty :

4*th.*—A majority of the Jury (stating the number, as above,) find that Z is not guilty of the offence specified in the charge, namely, that Z has, with the intention of inducing the Honorable A. B., a Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and that he has thereby committed an offence punishable under Section 124 of the Indian Penal Code. The Court directs that the said Z be discharged.

When the Jury, or such a majority as is required by Section 328 of this Act, concur in finding the accused guilty of an offence, but are doubtful under which of two heads of a charge the offence falls :

5*th.*—The Jury, or a majority of the Jury (stating the number, as above,) find that Z is guilty either of the offence specified in the first head of the charge, or of the offence specified in the second head of the charge, namely, that Z has either committed theft, and has thereby committed an offence punishable under Section 379 of the Indian Penal Code, or that he has committed criminal breach of trust, and has thereby committed an offence punishable under Section 406 of the said Code. The Court directs that, under the provisions of the above-mentioned Sections, and the provisions of Section 72 of the Indian Penal Code, the said Z be [*sentence.*]

S. 72, Penal Code, declares that in "all cases in which judgment is given that a person is guilty of one of several offences, but it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided, if the same punishment is not provided for all."

The Calcutta High Court has held that there may be an alternative finding as well in a case in which the evidence proves the commission of one of two offences falling within the same Section of the Penal Code, and it is doubtful which of such offences has been proved, as in one in which the evidence proves the commission of an offence falling within one of two Sections of the Penal Code, and it is doubtful which of such Sections is applicable. Thus a person may be convicted of having intentionally given false evidence in having stated that he saw A. B. kill C. D., *or* that he did *not* see A. B. kill C. D., or, as specified in the model form of finding, that he committed theft or criminal breach of trust.—See cases of Mussamut Zameerun, 6 W. R., 65; and Govind Lall Thakoor, *Ibid*, 55.

The Agra Sudder Court has, however, quoted with approbation, as an instruction to a Magistrate, the following extract from page 51 of an edition of the Indian Penal Code by Messrs. Morgan ann Macpherson :—

"This mode of procedure or punishment should only be resorted to in cases in which it is impossible to ascertain the specific offence committed by a person who clearly has participated in, or is guilty of, some offence. The main facts which constitute the body of such offence are proved, and the doubt relates to some incidental point which is of a quality important only as determining whether the offence falls technically under one designation or another. Without determining this point, the Court convicts the offender in the alternative, and sentences him to a punishment equally warrantable whether the offence were *(ex. gr.)* theft or breach of trust."

When a majority less than the number required by Section 328 of this Act find the accused guilty :

6*th*.—A majority of the Jury (stating the number, as above,) find that Z is guilty of the offence specified in the charge, namely, that he has committed, &c., &c., the Court directs that the Jury be discharged, and that there be a new trial.

A similar form shall be followed if a verdict of not guilty is found by a majority less than is required by Section 328 of this Act.

If the finding be on a second trial, and a majority less than is required by Section 328 of this Act, find the accused guilty :

7*th*.—A majority of the Jury (stating the number, as above,) find that Z is guilty of the offence specified in the charge, namely, that he has committed, &c., &c. This being a second trial under Section 351 of the Code of Criminal Procedure, the Court directs that the said Z be discharged.

In trials with Assessors :

9*th*.—The Court, concurring with the Assessors (or one or more of the Assessors), finds that Z is guilty of the offence specified in the charge, namely, that Z has committed the offence of rioting, and has thereby committed an offence punishable under Section 147 of the Indian Penal Code ; and the Court directs that the said Z be [*sentence.*]

10*th*.—The Court, differing from the Assessors, finds that Z is not guilty of the offence specified in the charge, namely, that Z has committed the offence of rioting, and has thereby committed an offence punishable under Section 147 of the Indian Penal Code ; and the Court directs that the said Z be discharged.

The following rules have been circulated by the Calcutta High Court [Cir. 16, 1864] for the guidance of all officers subordinate to them :—

1*st*.—When *all* the facts in evidence form portion of *one* entire offence, a verdict should be entered up, and sentence passed, for that offence only ;

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and though a portion of the *same facts* would, if they stood alone, constitute a second offence, a verdict of "not guilty" should be entered up on any separate charge for the minor offence.

2nd.—For instance, when the chief offence charged and proved by the evidence is theft, the fact of the stolen property being found in the possession of the offender should be considered as a portion of the evidence by which the chief offence is proved; and a verdict of "not guilty" should be entered upon the charge of dishonestly receiving or retaining such property.

3rd.—If a portion of the facts in evidence constitute *one* offence, and another and *distinct* portion constitute a *second separate and distinct offence*, under the Penal Code, a verdict on each charge should be entered up and a substantial sentence passed on the principal offence, and a light one or none on the second offence charged; or a substantial sentence, if necessary, on each offence; the second sentence to commence on the expiry of the first. The Code of Criminal Procedure does not recognize concurrent or cumulative sentences.

4th.—Such, for instance, would be the course to be pursued when there is a conviction for rape and assault, and subsequent imprisonment, or for forgery of a Bill of Exchange, and for subsequent perjury in swearing in a Court of Justice that it is a genuine document.

11*th*.—The Court, concurring with one of the Assessors, finds that Z is guilty either of the offence specified in the first head of charge, or of the offence specified in the second head of charge, namely, that Z has either committed theft, and has thereby committed an offence punishable under Section 379 of the Indian Penal Code, or that he has committed criminal breach of trust, and has thereby committed an offence punishable under Section 406 of the Indian Penal Code; and the Court directs that, under the provisions of the above-mentioned Sections, and the provisions of Section 72 of the Indian Penal Code, the said Z be [*sentence.*]

In trials upon a formal charge, without Jury or the aid of Assessors:

12*th*.—The Court finds that Z is guilty of the offence specified in the charge, namely, that Z has committed theft, and has thereby committed an offence punishable under Section 379 of the Indian Penal Code; and the Court directs that the said Z be [*sentence.*]

13*th*.—The Court finds that Z is not guilty of the offence specified in the charge, namely, that Z has committed theft, and has thereby committed an offence punishable under Section 379 of the Indian Penal Code; and the Court directs that the said Z be discharged.

These two forms would be used in trials held by a Magistrate under Chapter XIV.

In trials in which no formal charge has been prepared:

14*th*.—The Court finds that Z has used criminal force, and has thereby committed an offence punishable

under Section 353 of the Indian Penal Code, and directs that the said Z be [*sentence.*]

15*th.*—The Court finds that the complaint of assault is not proved, acquits Z, and directs that he be discharged.

Then two forms would be used in trials held by a Magistrate under Chapter XV.

Execution of sentence of Court in cases referred to the Sudder Court for confirmation of sentence.

383. In cases referred by the Court of Session* for the confirmation of a sentence by the Sudder Court,† the proper Officer of the Sudder Court† shall, without delay, after the order of confirmation or other order has been made by the Sudder Court,† transmit a copy of the order under the seal of the Sudder Court,† and attested with his official signature,. to the Court of Session,* which, if the sentence be confirmed, shall immediately issue a warrant to the Magistrate or other Officer in charge of the Jail in which the prisoner is confined, to cause the sentence, or order to be carried into execution; or, in the case of any other order, shall cause such order to be carried into effect.

* S. 13.

† S. 19.

The procedure of the Sudder Court as a Court of Reference is laid down in Chapter XXXVIII., Ss. 398—401.

The "other order" referred to, would be an order either for a new trial, or of acquittal [S. 399], or for further enquiry, and the taking of additional evidence [S. 400], or for the offer of conditional pardon to one or more of the parties concerned [S. 210].

Warrants should be issued to the officer in charge of the Jail, and not to the Magistrate, in order to provide for cases in which officers other than Magistrates should be appointed to the charge of Jails.—Calcutta High Court, Cir. 10, 1865. The law does not require that the Sessions Judge should issue a separate warrant under S. 383 in the case of each prisoner sentenced: a single warrant should include all who are involved in one sentence.—Cir. 3, 1867.

The following form of warrant in sentences of death has been issued by the Calcutta High Court:—

No. 1.

COURT OF SESSIONS.

Trial No. Calendar.
Session

To

Magistrate of

Whereas at a General Jail Delivery of for the holden at on the day of the month of in the year 186 having been convicted of and sentenced by the Court of Session to suffer death by being hanged by the neck until dead, after which body, unless claimed by relatives or friends, to be either burnt or interred; and whereas the said sentence has been duly confirmed by order of the High Court of Judicature—

It is hereby ordered that execution of the said sentence be made and done upon the said on or before the of the month of and that you do return this Warrant to this Court with

CH. XXVI. S. 384.

an endorsement attested by your Official Seal and Signature, certifying the manner in which the sentence has been executed as commanded by S. 385 of the Code of Criminal Procedure.

Herein fail not.
Given under my hand and the Seal of this Court on the day of in the year 186 .

When a woman sentenced to death is found to be pregnant, the sentence shall not be carried out until such time of her delivery.—Mussamut Gurbhamee, Suth. Rep., 1864, p. 1.

The Sessions Judge should fix the time and place for carrying out sentences of death, and should give orders regarding the disposal of the corpses of executed convicts.—Calcutta High Court, 1863.

* S. 13.

Court of Session to direct warrant to District Magistrate.

384. In cases tried by the Court of Session,* the Court shall forward a copy of its sentence, together with a warrant for the execution of the same, directed to the Magistrate of the District† in which the trial was held, or to such other Officer as aforesaid.

† Ss. 14, 18.

"Other Officer as aforesaid," *i. e.*, other Officer in charge of the Jail (S. 383) to whom alone the Calcutta High Court has ordered that warrants of sentence should be directed.—Cir. 10, 1865.

"When any person shall be sentenced to transportation, the Court passing the sentence shall not specify in its sentence the place to which that person shall be sent for the purpose of undergoing that sentence."—S. 50.

The law does not require that the Sessions Judge should issue a separate warrant under S. 384 in the case of each prisoner sentenced: a single warrant should include all who are involved in one sentence.—Calcutta High Court, Cir. 3, 1867.

Full particulars of the residence of the convict should invariably be inserted in every warrant of imprisonment issued by a Court of Session.—Agra Sudder Court, Cir. 7, 1866.

The following forms of warrants for execution of sentences passed by Sessions Courts have been issued by the Calcutta High Court:—

No. 2.

COURT OF SESSIONS.

Trial No.

Session

To

Magistrate of

Whereas at a General Jail Delivery of for the holden at on the day of the month of in the year 186 having been convicted of and sentenced by the Court of Session to it is hereby ordered that execution of the said sentence be made and done upon the said without delay, and that you do return this Warrant when completely executed, with an endorsement, attested by your Official Seal and Signature, certifying the manner in which the sentence has been carried into execution, as commanded by S. 385 of the Code of Criminal Procedure.

Herein fail not.
Given under my hand and the Seal of this Court, this day of in the year 186 .

No. 3.

COURT OF SESSIONS.

Trial No. of Calendar.
Session
To

Magistrate of

Whereas at a General Jail Delivery of for the holden at on the day of the month of in the year 186 having been convicted of and sentenced by Court of Session for imprisonment for a term of years from and to pay a fine of Rupees.

It is hereby ordered that execution of the said sentence be made and done upon the said without delay, as commanded by the Code of Criminal Procedure or other laws now in force, and that you do return this Warrant, when completely executed, with an endorsement attested by your Official Seal and Signature, certifying the manner in which the sentence has been carried into execution.

Herein fail not.
Given under my hand and the Seal of this Court this day of in the year 186 .

No. 4.

COURT OF SESSIONS.

Trial No. of Calendar.
Session
To

Magistrate of

Whereas at a General Jail Delivery of for the holden at on the day of the month of in the year 186 charged with having been tried, and sentence of acquittal having been passed upon the said

It is hereby ordered that the said be released, and that you do return this Warrant to me, with an endorsement, attested by your Official Seal and Signature, certifying the manner in which the sentence has been executed.

Herein fail not.
Given under my hand and the Seal of this Court this day of in the year 186 .

CH. XXVI. S. 384.

A Register of Warrants in the following form has been ordered by the Calcutta High Court to be kept up in the Offices of all Sessions Judges:—

Register of Warrants.

1	2	3		4		5			Memo.
Name of prisoner.	Date of sentence.	Term of imprisonment.		When the sentence will be expired.		Warrants when received from the Jailor or Magistrate.			
		Years.	Months.	Month.	Date and year.	Month.	Date.	Year.	

Execution of sentence under the two last foregoing Sections.

385. Upon the receipt of a warrant under either of the last two preceding Sections, the Magistrate or other Officer as aforesaid* shall cause the sentence to be executed, and shall return the warrant, when the sentence has been fully executed, to the Court from which it issued, with an endorsement under his signature, certifying the manner in which the sentence has been executed.

* S. 383.

There should be no delay in returning a warrant, duly endorsed, when a sentence has been fully executed, or the convict has died.—Calcutta High Court, Cir. 8, 1863.

When a woman sentenced to death is found to be pregnant, her sentence shall not be carried into execution until such time as her delivery.—Mussamut Gurbhamee, Suth. Rep., 1864, p. 1.

When pregnancy is declared and certified by the Civil Surgeon the warrant should be returned to the Sessions Judge with an endorsement to that effect.—Agra Sudder Court, 1864.

The following form of certificate has been ordered by the Agra Sudder Court:—

"I hereby certify that the sentence of death passed on son of by the Court of Session, and confirmed by the High Court, has been duly executed; and that the said son of was accordingly hanged by the neck until he was dead, at on the 186 .

"I further certify that the body of the said remained hanging one hour, and the Medical Officer in attendance certified complete extinction of life prior to its removal, and that it was afterwards delivered to relatives (burned, or buried, not having been claimed by his relations, as the case may be); and that no accident, error, or other misadventure occurred during his execution.

"Given under my hand and the Official Seal of this Court this day of 186 ."

Warrant of commitment in cases of imprisonment.

386. In every case of imprisonment under the sentence of the Sudder Court† or of a Court of Session,‡ the Magistrate or other Officer as aforesaid§ shall issue his warrant to the Jailor, stating the offence of which the accused person has been convicted, and the period during which he is to be imprisoned, and the nature of the imprisonment. In every case of imprisonment under the sentence of any other Court, the Court passing the sentence shall issue its warrant to the Jailor, and the warrant shall contain the same particulars and be to the same effect.

† S. 19.
‡ S. 13.
§ S. 383.

A separate warrant should be issued by the Magistrate to the Jailor in the case of each convict, and should accompany him to whatever Jail he may be transferred.—Cal. High Court, Cir. 3, 1867.

The term of imprisonment should be calculated from the date on which the sentence was passed, not from that of the prisoner's arrival at the Jail; but the period for which a sentence may be suspended, during appeal, is not to be reckoned in calculating the term of imprisonment, if the appeal be rejected.—Madras High Court.

CHS. XXVI. & XXVII. Ss. 387 & 388.

If a prisoner, sentenced to punishment by any authority, except a special Court,* should be seized with illness, or be liable to any personal infirmity of such a nature as would occasion the execution of the sentence to produce corporal evil of a sort not intended, the officer whose duty it may be to execute the sentence shall be authorised to delay it, till such illness or infirmity may have ceased, if temporary: and, if permanent, he shall report the case to the Sudder Fouzdary Adawlut, which shall have authority to recall the warrant, and issue another containing such sentence of commuted punishment as it may deem adequate; the same being of the nature and within the limit prescribed for the respective offence.—Reg. (Bombay) XIV., 1827. S. 3, cl. 2.

*Probably a Court under Act V., 1841.

* S. 13.
† S. 19.

Transmission of periodical calendars of trials by Court of Session.

387. The Court of Session* shall transmit to the Sudder Court† such periodical statements or calendars of trials held by such Court as the Sudder Court† shall prescribe, exhibiting the offences charged, the offences of which the accused persons are convicted, and the sentences or orders passed upon them.

CHAPTER XXVII.—Ss. 388—397.

Of Lunatics.

Procedure in case of accused person being lunatic.

388. When any person who is charged with an offence shall appear to the Magistrate having jurisdiction to be of unsound mind, and incapable, in consequence, of making a defence, the Magistrate shall institute an inquiry to ascertain the fact of such unsoundness of mind, and shall cause the accused person to be examined by the Civil Surgeon of the District, or some or other Medical Officer, and thereupon shall examine such Civil Surgeon or other Medical Officer, and shall reduce the examination into writing; and if the Magistrate shall be of opinion that the accused person is of unsound mind, he shall stay further proceedings in the case.

The words "having jurisdiction" apply equally to preliminary enquiries as to trials. To proceed with a charge against a lunatic, either in a preliminary enquiry before a Magistrate, or on trial before a Sessions Judge, is contrary to the Code of Criminal Procedure, for S. 194 presumes that the accused, in whose presence the complainant and his witnesses are to be examined, and who is entitled to cross-examine them, is at the time at which those acts are done *compos mentis*.—3 W. R., 5 C. L. A person appearing of unsound mind and incapable of making his defence cannot, while in that condition, be put on his trial, or be acquitted of the offence with which he is charged.—Agra Sudder Court, Cir. 9, 1863.

Procedure in case of person committed before a Court of Session being lunatic.

389. If any person who shall be committed for trial before a Court of Session,* shall at his trial appear to the Court to be of unsound mind and incapable of making his defence, the Court shall in the first instance try the fact of such unsoundness of mind, and if satisfied of the fact, shall give a special judgment that the accused person is of unsound mind and incapable of making his defence, and thereupon the trial shall be postponed.

* S. 13.

The Bombay High Court instructed a Sessions Judge that, on entertaining doubts as to the sanity of the accused person, he should not merely have put questions to him, but should have tried the fact of such unsoundness of mind by examining the Civil Surgeon or some other medical officer, and by taking such evidence as might have been procurable from the village in which the accused resided, with the view of ascertaining whether he had, at any time prior to the commission of the crime, exhibited symptoms of insanity.—Heera Poonja, 1 Bombay, 33. The Magistrate or Sessions Judge should report such a case *direct* to Government.—Agra Sudder Court, Cir. 91, 1863.

Release of lunatic pending investigation or trial.

390. In any case in which an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court of Session,† as the case may be, if the offence be bailable, may release such person on sufficient security being given that he shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, and for his appearance when required. If the offence be not bailable, or if the required bail be not given, the accused person shall be kept in safe custody in such place as the Local Government to which the case shall be reported shall direct.

† S. 13.

The Governor-General in Council has, under Act XXXII. of 1867, delegated to the Chief Commissioners of Oude, the Central Provinces, and British Burmah, the powers conferred on a Local Government by S. 390 of this Code.—*Gazette of India* of 1867, p. 1223; and of 1868, p. 44.

After a case has been reported to Government under S. 390, it should not be struck off, but kept on the register of pending cases in accordance with S. 391.—Rughora, 6 W. R., 3.

The following rules for the conveyance of lunatics to Asylums have been issued by the Government of Bengal:—

1. For persons of unsound mind who need to be sent to the Lunatic Ayslums of the Lower Provinces, wherever practicable, water shall be preferred to land carriage.

2. No lunatic shall be sent from a Jail, or other place in which he is temporarily confined for safe custody, to a Lunatic Asylum, when he is in an unfit state to travel with safety, either from ordinary bodily disease, or during the acute stage of the form of mental aberration under which he is laboring.

3. Every lunatic who is unable to take care of himself, or to attend to his personal wants, shall be provided with the attendance, clothing, and food, necessary for his safety and protection, and the strictest injunctions shall be

given to the persons in charge of such lunatics to see that they do not suffer injury from exposure to weather, want of food, the neglect of personal cleanliness, or any other cause whatever.

4. Every lunatic in transit to an Asylum shall be provided with at least two complete suits of clothing, and with an extra blanket, so as to admit of their being changed and washed in case of necessity. The most stringent orders shall be given to the persons in charge of a lunatic that all fouled clothes shall immediately be changed and cleansed before they are again worn.

5. Proper provision for cooking and supplying the food of lunatics in transit shall be made by the Officer transmitting them.

6. Every lunatic, prior to transfer to an Asylum, shall be carefully examined by the Medical Officer who furnishes the certificate of unsoundness of mind, and the Medical Officer referred to shall certify that all the above-mentioned provisions for the safe custody of the lunatic have been made, and that he is in a fit state to travel. This certificate shall be transmitted by post to the Officer in charge of the Asylum to which the lunatic is sent, and a duplicate copy of it shall be given to the person sent in charge of the lunatic.

7. The Officer in charge of the Asylum shall, on the arrival of a lunatic, see that the above orders have been strictly observed, and that the lunatic has been properly cared for in transit. Should there be any evidence of carelessness or other breach of these Rules, the matter shall at once be reported in writing to the Magistrate of the District for the information and orders of the Government.

Resumption of investigation of case.

391. Whenever any investigation or trial of a case shall be postponed under Section 388 or Section 389 of this Act, the Magistrate or Court of Session,* as the case may be, may at any time resume the investigation or trial, and require the accused person, if detained in custody, to be brought before such Magistrate or Court, or if the accused person has been released on security, may require his appearance. Until such investigation or trial is completed, the case shall be considered as pending before the Magistrate or Court of Session,* and shall be included in any register of pending cases kept by such Magistrate or Court. The surety of such person shall be bound at any time to produce him to any Officer whom the Magistrate or Court of Session may appoint to inspect him, and the certificate of such Officer shall have the same effect as the certificate of an Inspector of Jails or the Visitors of Lunatic Asylums granted under Section 395 of this Act.

* S. 13.

By S. 395, cl. 2, such a certificate may be received as evidence. The report of the Officer appointed under the foregoing Section to inspect the lunatic under trial in a similar manner may be received as evidence and may be acted upon.

"Investigation or trial." Investigation no doubt refers to the enquiry of a Magistrate under Chapter XII., preliminary to commitment for trial by a Court of Session. Trial includes trials before a Magistrate having jurisdiction, and before a Court of Session.

Procedure on accused appearing or being brought before Magistrate or Court of Session.

392. If, when the accused person appears or is again brought before the Magistrate or the Court of Session,* as the case may be, it shall appear to such Magistrate or Court that the accused person is in a fit state of mind to make his defence, the investigation shall proceed, or the accused person shall be put on his trial, as the case may require. If it shall appear that the accused person is still of unsound mind, and incapable of making his defence, the Magistrate or Court of Session shall again act according to the provisions of Section 388 or Section 389 of this Act.

* S. 13.

Procedure in case of acquittal of accused person on the ground of being lunatic.

393. Whenever any person is acquitted, upon the ground that at the time at which he is charged to have committed an offence he was, by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong, or contrary to law, the finding shall state specially whether he committed the act or not.

By S. 84, Penal Code, "nothing is an offence which is done by a person, who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

When it appears to the Magistrate that the offence charged is triable only by the Court of Session, and was committed when the prisoner was, by reason of unsoundness of mind, incapable of knowing the charge of the act charged, or that he was doing what was wrong or contrary to law, the Magistrate is not bound by S. 226 to commit him for trial: but as the Jury is required by S. 393 to find specially whether he has committed the act charged or not, in order to his being kept in safe custody, there are good grounds for committing him for trial, and though commitment is discretional with Magistrates, the High Court declared that in its opinion there can be no doubt as to the propriety of committing such a person.—Calcutta High Court, Cir. 7, 1867.

If upon a trial it is doubtful whether the accused was or was not sane at the time of the commission of the Criminal act charged, the trial should be postponed, and he should be placed under the care of the Civil Surgeon, who should carefully watch his state of mind, with the view to discover whether he is subject to recurring fits of insanity or light-headedness. The Calcutta High Court, on his appeal, remanded the case of Sheikh Moostafa (1 W R., 1) for this purpose, ordering that, after having had charge of the prisoner for a period not less than thirty days, the Civil Surgeon should report to the Sessions Judge, and be examined on oath as to his state during that period.

It will not be out of place here to quote the leading case in England on this point. The following questions put by the House of Lords in the case of R. *v.* McNaughten [Archbold, pp. 15—17) received the following answers from the English Judges:—

"1*st*.—What is the law respecting alleged crimes committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons; as, for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act com-

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plained of with a view, under the influence of insane delusion of redressing or revenging some supposed grievance or injury, or of producing some public benefit?

"2*nd*.—What are the proper questions to be submitted to the Jury when a person, alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime, (murder for example) and insanity is set up as a defence?

"3*rd*.—In what terms ought the question to be left to the Jury as to the prisoner's state of mind at the time when the act was committed?

"4*th*.—If a person, under an insane delusion as to the existing facts, commits an offence in consequence thereof, is he thereby excused?

"5*th*.—Can a Medical man, conversant with the disease of insanity, who never saw the prisoner previous to the trial, but who was present during the whole trial, and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious, at the time of doing the act, that he was acting contrary to law, or whether he was laboring under and what delusion at the time?"

To these questions the Judges (with the exception of *Maule, J.*, who gave on his own account a more qualified answer) answered as follows:—

To the first question:—"Assuming that your Lordships' inquiries are confined to those persons who labor under such partial delusions only, and are not in other respects insane, we are of opinion that, notwithstanding the party did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew, at the time of committing such crime, that he was acting contrary to law, by which expression we understand your Lordships to mean the law of the land."

To the *second* and *third* questions:—"That the Jury ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he has doing what was wrong. The mode of putting the latter part of the question to the Jury on these occasions has generally been, whether the accused, at the time of doing the act, knew the difference between right and wrong, which mode, though rarely, if ever, leading to any mistake with the Jury, is not, as we conceive, so accurate when put generally, and in the abstract, as when put to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused, solely and exclusively with reference to the law of the land, it might tend to confound the Jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction, whereas the law is administered upon the principle that every one must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course, therefore, has been to leave the question to the Jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong; and this course, we think, is correct,' accompanied with such observations and explanations as the circumstance of each particular case may require."

To the *fourth* question:—"The answer to this question must of course depend on the nature of the delusion; but making the same assumption as we did before, that he labors under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real For example, if, under the influence of his delusion he supposes

another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defence, he would be exempt from punishment. If his delusion was that the deceased has inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."

And to the *last* question:—"We think the Medical man, under the circumstances supposed, cannot in strictness be asked his opinion in the terms above stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the Jury to decide; and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But where the facts are admitted or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right."

In the cases of Sheikh Moostafa (1 W. R., 19) and of Pursoram (7 W. R., 42), which were tried in the Sessions Courts with the aid of Assessors, the Calcutta High Court acquitted the prisoners on the ground specified in S. 84, Penal Code, but directed the Sessions Judge to report the cases for the orders of Government under S. 394, Code of Criminal Procedure.

The terms of the law should be strictly followed in recording the finding in a case falling under S. 393. A Judge should not find an accused person guilty of the offence charged, and then acquit him on the ground of insanity.—Calcutta High Court, 22, 1864.

The following finding was given by the Calcutta High Court (8 W. R., 19 C. L.) as a model in cases dealt with under S. 394:—The Court concurring with the Assessors, finds that Gazee Peer did kill Baboo Mundul by striking him on the head with a club: but that by reason of unsoundness of mind, he was incapable of knowing that he was doing an act which was wrong or contrary to law, and that he is not, therefore, guilty of the offence specified in the charge, *viz.*, that he has committed culpable homicide not amounting to murder by causing the death of Baboo Mundul, and has thereby committed an offence punishable under S. 304 of the Indian Penal Code, and the Court directs that the said Gazee Peer be acquitted, and that, under the provision of S. 394 of the Code of Criminal Procedure, the said Gazee Peer be kept in safe custody in the ——— pending the orders of the Local Government.

The insanity of the accused person at the time of his committing the offence, should not be tried as a preliminary point. It should be determined at the conclusion of the trial.—1 Agra, 53.

Person so acquitted to be disposed of by Magistrate or Court of Session for safe custody, &c.

394. Whenever such finding shall state that the accused person committed the act charged, the Magistrate or Court of Session* before whom the trial was held, shall, if the act charged would, but for the incapacity found, have amounted to an offence, order such person to be kept in safe custody, in such place and manner as to the Magistrate or Court of Session* shall seem fit, and shall report the case for the order of the Local Government. The Local Government may order such person to be kept in safe custody in a Lunatic Asylum or other suitable place of safe custody.

* S. 13.

A Sessions Judge tried and acquitted an accused person upon the ground, that, "at the time at which he was charged to have committed the offence, he was by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law"

[S. 393], notwithstanding that at the time of trial he was incapable of making his defence. The Calcutta High Court held that these proceedings were altogether irregular, and quashed them, directing the Judge to proceed under Ss. 389, 390, Criminal Procedure.—Mukhun Chowdry, September 9th, 1865. Magistrates and Sessions Judges should report such cases *direct* to Government.—Agra Sudder Court, 9, 1863.

Lunatics to be visited and reported on by Inspector of Jails, &c.

395. *Clause* 1.—When any person is confined under the provisions of Section 390 or Section 394 of this Act, it shall be lawful for the Inspector of Jails, if such person is confined in a Jail, or for the Visitors of Lunatic Asylums, or any two of them, if such person is confined in a Lunatic Asylum, to visit such person in order to ascertain his state of mind; and such person shall be visited once at least in every twelve months by such Inspector of Jails, or by two of such Visitors as aforesaid, who shall make a special report as to the state of mind of such person.

If lunatic confined under Section 390 is reported capable of making his defence.

Clause 2.—If such person is confined under Section 390 of this Act, and such Inspector of Jails, or such Visitors of Lunatic Asylums as aforesaid shall report that in his or their opinion such person is capable of making his defence, such person shall be taken before the Magistrate or Court of Session,* as the case may be, at such time as such Magistrate or Court of Session* shall appoint; and such Magistrate or Court shall deal with such person under the provisions of Section 392, and may receive as evidence the certificate of such Inspector of Jails or such Visitors of Lunatic Asylums as aforesaid.

* S. 13.

The Government of Bengal has by its Order No. 1300, dated 1st March 1868, directed visitors of Lunatic Asylums to consider the provisions of cls. 1 and 2, S. 395, to be applicable to the cases of lunatics confined before 1st January 1862, the date on which this Code came into force.

If lunatic confined under Section 394 is declared capable of being discharged.

Clause 3.—If such person shall be confined under the provisions of Section 394 of this Act, and such Inspector of Jails, or such Visitors of Lunatic Asylums as aforesaid shall certify that in his or their judgment such person may be discharged without danger of his doing injury to himself or to any other person, the Local Government shall thereupon either order his discharge, or order such person to be transferred to a public Lunatic Asylum if he has not been already sent to such an Asylum, and shall within six

months appoint a Commission consisting of a Judicial Officer not below the grade of a Sessions Judge, and two Medical Officers, whereof the Chief Medical Officer attached to the Lunatic Asylum shall be one. The said Commission shall make formal enquiry into the state of mind of such person, taking such evidence as shall be necessary; and if they consider that he can be set at liberty without danger to himself or to any other person, he shall be discharged.

The Governor-General in Council has, under Act XXXII. of 1867, delegated to the Chief Commissioners of Oude, the Central Provinces, and British Burmah, the powers conferred on a Local Government by S. 395 of this Code.—*Gazette of India* of 1867, p. 1223: of 1868, p. 44.

Person under sentence of imprisonment, appearing to be of unsound mind, may be removed to Lunatic Asylum, and kept till he shall again become of sound mind, &c.

396. Whenever it shall appear to the Local Government that any person, imprisoned by the sentence of any Court or Magistrate, is of unsound mind, the Local Government, by an order which shall set forth the grounds of belief that such prisoner is of unsound mind, may order the removal of such prisoner to a Lunatic Asylum, there to be kept and treated as the Local Government shall direct during the remainder of the term of imprisonment ordered by the sentence: or if it shall be certified by a Medical Officer that it is necessary for the safety of the prisoner or others that he should be detained under care and treatment, then until he shall be discharged according to law; and when it shall appear to the Local Government that such person has become of sound mind, the Local Government, by an order directed to the person having charge of him, shall remand such person to the custody from which he was removed, if then still liable to be kept in custody, or, if not, shall order him to be discharged out of custody. The provisions of Section IX. of Act XXXVI. of 1858 *(relating to Lunatic Asylums)* shall apply to persons confined in a Lunatic Asylum under this Section after the expiration of the imprisonment ordered by the sentence. The period during which a person shall be confined in a Lunatic Asylum shall be reckoned as part of the period of imprisonment ordered by the sentence.

Act XXXVI. of 1858, S. 9, declares that "it shall be lawful for three of the Visitors of any Asylum, of whom one shall be a Medical Officer, by writing under their hands, to order the discharge of any person detained in such Asylum. When such order is given, if the person is detained under the

CH. XXVII. Ss. 397 & 398.

order of any public officer, notice of the order of discharge shall be immediately communicated to such officer.

The Governor-General in Council has, under Act XXXII. of 1867, delegated to the Chief Commissioners of Oude, the Central Provinces, and British Burmah, the powers conferred on a Local Government by S. 396 of this Code.—*Gazette of India* of 1867, p. 1223: and of 1868, p. 44.

Cases under S. 396 should be submitted to Government through the Inspector-General of Jails, accompanied with all the documents necessary for establishing the fact of insanity, and for a transfer of the prisoner to a Lunatic Asylum.—Bengal Jail Rules, 245, 246.

When lunatic may be delivered over to the care and custody of a relative or friend.

397. Whenever any relative or friend of any person detained under the provisions of Section 394 of this Act is desirous that such person shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person detained shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, may make an order that the person so detained may be delivered to such relative or friend. Whenever such person shall be so delivered over, it shall be upon condition that he shall be subject to the inspection of such Officer as the Local Government shall think necessary to appoint, and at such times as such Government shall direct. The provisions of Section 395 shall apply to persons detained under the provisions of this Section, and the certificate of the Inspecting Officer appointed under this Section shall have the same effect as a certificate of an Inspector of Jails, or the Visitors of Lunatic Asylums under the said Section.

This Section applies only to the care of a person detained under S. 394, who may have committed an act, which but for his incapacity under S. 84, Penal Code, would have amounted to an offence.

The Governor-General in Council has, under Act XXXII. of 1867, delegated to the Chief Commissioners of Oude, the Central Provinces, and of British Burmah the powers conferred on a Local Government by S. 397 of this Code.—*Gazette of India* of 1867, p. 1223: and of 1868, p. 44.

CHAPTER XXVIII.—Ss. 398—401.

Sudder Court as a Court of Reference.

* S. 19.

† S. 13.

Constitution of Court for hearing case referred for confirmation of sentence.

398. A case referred to a Sudder Court* by a Court of Session† for confirmation of a sentence of death shall be heard by a Court constituted by two or more Judges of such Sudder Court.*

Act XV. of 1862, S. 2, declares that, "when the Sudder Court in any part of the territories to which the Code of Criminal Procedure has been, or shall be, extended shall consist of a single Judge, such Judge shall have all the powers of two or more Judges of the Sudder Court under Ss. 398, 401, and 420 of the said Code."

By S. 22 of this Code a Court of Session is declared competent to pass sentence of "death (subject to confirmation by the Sudder Court)." S. 53 requires that, "when any person shall be sentenced to death, the sentence shall direct that such person be hanged by the neck until he is dead."

399. In any case so referred, the Sudder Court* may either confirm the sentence or pass any other sentence warranted by law, or may annul the conviction and order a new trial on the same or an amended charge. If the case shall have been tried by the Court of Session† with the aid of Assessors, it shall further be competent to the Sudder Court* to acquit the accused person and order his discharge.

Power of Sudder Court to confirm, reverse, &c., sentence.

* S. 19.

† S. 13

In a case tried in the Sessions Court with the aid of Assessors, and submitted for confirmation of a sentence of death, the Agra Sudder Court acquitted the prisoner so sentenced by the Sessions Court, and, acting as a Court of Revision, ordered the release of the other prisoners whose case had not come up.—3 Agra, 169.

In four instances, without the appeal of the parties sentenced to death, the Calcutta High Court have altered the findings and reduced the sentences. In the case of Deenoo Jana the Court altered the finding of dacoity with murder, of which offence the prisoner had been convicted and sentenced to death by the Sessions Judge, and, convicting him under S. 412, Penal Code, "of receiving stolen property acquired by dacoity," &c., sentenced him to 10 years' rigorous imprisonment.—(February 1st, 1864). In the cases of Gooroo Churn Palli and another (1 W. R., 17), of Saleem Sheikh (1 W. R., 22), and of Nokul Noshyo (7 W. R., 27), the prisoners, who were all convicted of murder, and sentenced to death by the Sessions Court, were, by the High Court, to whom their cases were referred, convicted of culpable homicide not amounting to murder, and sentenced to various terms of imprisonment. All these cases had been tried in the Courts of Session with the aid of Assessors.

The same Court, however, in another case referred for confirmation of sentence of death passed by the Sessions Judge in a trial held with the aid of Assessors, finding that the prisoners were guilty not of murder, but of grievous hurt, annulled the conviction, and ordered a new trial on a charge of that offence, holding that this was the only course open to it.—Sheikh Salim and others, 5 W. R., 41.

In the case of Bebon Aurut (17th January 1868), which was tried by a Jury, and referred to the High Court for confirmation of sentence of death, it was held that the Court could not acquit the prisoner, but must take one of the three courses laid down in the first clause of S. 399.

400. If the case so referred shall have been tried by the Court of Session‡ with the aid of Assessors, it shall be competent to the Sudder Court,§ if it think further enquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused person to be necessary, to direct such enquiry to be made, or such additional evidence to be taken. The result of the further enquiry,

Competence of Sudder Court to direct further enquiry, &c.

‡ S. 13.

§ S. 19.

CH. XXVIII. S. 401.

and the additional evidence shall be certified to the Sudder Court,* and the Sudder Court* shall thereupon proceed to pass judgment of acquittal or such sentence as to the Court shall seem right.

* S. 19.

By S. 210 it is declared that "it shall be competent to the Sudder Court as a Court of Reference, in cases tried with the aid of Assessors, to instruct the Magistrate in like manner [S. 209] to tender a pardon to one or more persons supposed to have been directly or indirectly concerned in or privy to any such offence, with the view of obtaining his or their evidence on the trial." S. 211 provides that "if it shall appear to the Sudder Court as a Court of Reference that any person who shall have accepted an offer of pardon, has not conformed to the conditions under which the pardon was tendered, either by wilfully concealing anything essential, or by giving false evidence or information, it shall be competent to such Court to direct the commitment of such person for trial for the offence in respect of which the pardon was tendered."

Confirmation or new sentence must be signed by two Judges

401. In every case so referred to the Sudder Court, the confirmation of the sentence or any new sentence or order passed by the Sudder Court† shall be signed by at least two Judges of the Court.

† S. 19.

See Act XV. of 1862, S. 2, quoted in note to S. 392, *ante*.

"In cases referred by the Court of Session for the confirmation of a sentence by the Sudder Court, the proper officer of the Sudder Court shall, without delay, after the order of confirmation or other order has been made by the Sudder Court, transmit a copy of the order under the seal of the Sudder Court, and attested with his official signature, to the Court of Session, which, if the sentence be confirmed, shall immediately issue a warrant to the Magistrate or other officer in charge of the Jail in which the prisoner is confined, to cause the sentence or order to be carried into execution; or in the case of any other order, shall cause such order to be carried into effect."—S. 383.

CHAPTER XXIX.—Ss. 402—406.

SUDDER COURT AS A COURT OF REVISION.

The leading cases regarding the powers of a Sudder (*i. e.*, High) Court, as a Court of Revision are the cases of Gorachand Gope (5 W. R., 45): of Torab Sheikh (5 W. R., 2); and of Sheikh Bazoo (8 W. R., 47). The matter being of great importance, the judgments of the Calcutta High Court have been given *in extenso*.

In the case of Gorachand Gope (5 W. R., 45), Sir Barnes Peacock, *C. J.*, (Mr. Justice Trevor and Mr. Justice Norman, concurring) delivered the following judgment:—

"It appears to me that the rules contained in Ss. 407 and 419 of the Code of Criminal Procedure are not applicable to a case which the Court, as a Court of Revision, thinks it right to take up.

"An appeal is a matter of right in all cases in which an appeal is given, but a revision is in the discretion of the Court. An appeal is for matter of fact as well as for matter of law. A revision is only on matter of law. The two cases, therefore, are very different.

"When S. 407 says that an appeal shall not lie from a judgment of acquittal, it means that the prosecutor shall not, as a matter of right, be entitled to apply to reverse the judgment of acquittal, either upon the facts

or upon the law. But S. 404 authorizes the Court to call for and examine the record of any Criminal trial in which it shall appear that there has been error in the decision upon a point of law, and may determine any point of law arising out of the case, and thereupon pass such order as to the Court shall seem right. S. 405 enacts that it shall be lawful for the Court to call for and examine the record of any case tried by any Court of Session, for the purpose of satisfying itself as to the legality or propriety of any sentence or order passed, and as to the regularity of the proceedings of such Court. If it appear to the Court that the sentence passed is too severe, the Court may pass any mitigated sentence warranted by law. If the Court shall be of opinion that the sentence or order is contrary to law, the Court shall reverse the sentence or order, and pass such judgment, sentence, or order, as to the Court shall seem right, or, if it deem necessary, may order a new trial. The word 'sentence' in the latter Section may mean the award of punishment merely, or the whole judgment including the finding. If it refers only to the award of punishment, the finding would stand; and I can scarcely see the necessity or use of the words 'or may order a new trial.' The words 'sentence or order' are in many Sections used as including the finding, and not merely the award of punishment (Ss. 415, 416, 417, 420); but whatever may be the construction of the word 'sentence' in S. 405, there can be no doubt that, under S. 404, the Court may set aside a judgment of acquittal for error in point of law. Suppose the decision of a Judge should be monstrously absurd Suppose upon an indictment for murdering a child, the Judge and the Assessors should find that the prisoner caused the death of the child by doing an act with the intention of causing its death, and that the case did not fall within any of the exceptions mentioned in S. 300 of the Penal Code. But suppose they should also find that the child was under the age of six months, and the Judge should hold that it was not murder to kill a child under that age, and should, therefore, acquit the prisoner, and order him to be discharged, could it be contended that the judgment of acquittal could not be set aside, and that the prisoner should go free for ever? I apprehend that the Court, as a Court of Revision, would clearly have the power to set aside the judgment of acquittal, and declare that, upon the facts found, the prisoner was guilty of murder, and send the case back to the Judge, ordering him to apprehend the prisoner (if he had been discharged), and to pass the proper sentence upon him

"If, in the case above supposed, the Judge were to say it is not necessary to try, whether death was caused by an act done with the intention of causing death, because, if it was so caused, the prisoner was not guilty of murder, I find that the child was under the age of six months, and therefore acquit the prisoner. In such a case there would be no finding on the facts, and the Court, as a Court of Revision, would merely set aside the acquittal, and order a new trial. I have supposed an error in law which is not likely to occur. I put it merely as an illustration. There are many constructions of law equally erroneous, though not so clearly so.

"Again, suppose a Magistrate, in a case triable by him, should convict of an offence, and the Sessions Judge on appeal should, without going into the facts, reverse the decision upon a point of law, and order the prisoner to be discharged, stating that, assuming the facts to be as found by the Magistrate, the prisoner was not guilty of an offence. This Court, if the Judge were wrong in point of law, could, as a Court of Revision, reverse his decision, and direct him to try the appeal upon its merits.

"If a Judge on appeal should uphold the finding of a Magistrate on the facts, and reverse his decision in point of law, and pronounce a judgment of acquittal, and order the prisoner to be discharged, there as the acquittal would be merely on a point of law, this Court, as a Court of Revision, might reverse the judgment of acquittal, and order the sentence of the Magistrate to stand.

"There are also cases in which, notwithstanding S. 419, the Court, as a Court of Revision, could enhance a punishment.

"In the case of Bourne *versus* the King (9 Adolphus and Ellis's Reports, p. 58) it was held that a sentence of transportation, for an offence

for which the only punishment was death, was erroneous and must be reversed. The Court held that they could merely reverse the erroneous sentence but could not pass the right one, and the prisoners were discharged.

"The law was amended by 11 and 12 Vic. c. 78, by which the Court upon reversing an erroneous sentence, may give the proper judgment. Here, under S. 405, the Court, as a Court of Revision, has a similar power; but, in order to do so, it may be necessary to enhance the punishment. In the case suggested by Mr. Justice Campbell, if a Sessions Judge should pass sentence of rigorous imprisonment for 14 years for murder, such a sentence would be bad, for it is not authorized by law, (S. 302 of the Penal Code); or if he should pass sentence of transportation for 7 years for the offence of murder committed by a person under sentence for transportation for life, the sentence would be contrary to law.—(See S. 303, by which death is the only punishment which can be awarded).

"In such cases, the Court, as a Court of Revision, could under S. 405 reverse the sentence, and pass the proper sentence, notwithstanding that in such a case the sentence must be enhanced in order to pass a legal sentence—in the former case, from 14 years' rigorous imprisoment to death or transportation for life—and in the latter, from transportation for seven years to sentence of death. S. 405 says:—'If the Court shall be of opinion that the sentence or order is contrary to law, it shall reverse the sentence or order, and pass such judgment, sentence, or order as to the Court shall seem right, or, if it deem it necessary, may order a new trial.' In the case supposed, in which a prisoner under sentence of transportation for life should be found guilty of murder, and sentenced to transportation for 7 years, the Court might think the finding right upon the evidence, and there would, therefore, be no necessity for ordering a new trial. In such a case, a question might arise whether the the Court would be bound to pass the only legal sentence, *viz.*, death, or might send the case back to the Sessions Judge to pass the sentence. I am of opinion that the Court might send the case back, with an order to pass the proper sentence under the words 'shall pass such judgment, sentence, or order,' &c.

"In the case supposed of a prisoner being sentenced to 14 years' rigorous imprisonment for murder, upon setting aside the erroneous sentence, the right sentence would be a discretionary one, *viz.*, 'death or transportation for life.' In such a case I think the Court ought to send the case for proper sentence to be passed, in the same manner as it would do under S. 402.

"By the Statute 11 and 12 Vic. c. 78, s. 5, the Court, when it reverses a a judgment, may either pass a proper judgment, or remit the case to the Lower Court, in order that such Court may pass the proper judgment. It appears to me that in all cases in which the Court, as a Court of Revision, thinks it right to reverse an acquittal on a point of law, or to reverse as erroneous a sentence, in order that the right sentence may be passed, if the right sentence would enhance the one already passed, the offender should have an opportunity of being heard by himself, or his pleader, or agent, either before the Lower Court if the case is remitted to it, or before the High Court if the Judges pass the proper sentence themselves.

"The Court may act as a Court of Revision after it has acted as a Court of Appeal, if it found it necessary to do so, in order to correct an error in law which cannot be set right on appeal.

"For instance, if a man should be found guilty of a murder, and sentenced to 7 years' transportation, and if the prisoner should appeal on the facts, the Court might uphold the finding of guilty of murder on appeal, and afterwards as a Court of Revision, might set aside the sentence of 7 years' transportation, and pass a legal sentence for murder, or send it back to the Lower Court to pass such sentence, pointing out, as they would in a case under S. 402, what is the proper punishment.

"As a Court of Revision, the Court cannot reverse the finding of a Jury."—Gorachund Gope and others, 5 W. R., 45.

In the case of Torab Sheikh, (5. W. R., 2) the point was raised whether a Sessions Judge having convicted a prisoner of culpable homicide not amounting to murder, where the facts which were proved would make the offence murder,

the High Court could correct the error as a Court of Revision. The Court stated:—"It appears to us that by finding the prisoner guilty of culpable homicide not amounting to murder, the Sessions Judge and Assessors, in substance and effect, acquitted him of culpable homicide amounting to murder, and consequently acquitted him as well of any intention to cause death as of the knowledge that the act done was so imminently dangerous as to bring the offence within cl. 4, S. 300, in the same way as they would have acquitted him, if they had expressly found that he caused the death with the knowledge that the act was likely to cause death, but without the intention mentioned in cl. 1, 2, or 3 of S. 300, and without the knowledge mentioned in cl. 4 of that Section.

"If they had expressly acquitted him of murder in that way, it would not have been competent to this Court, either as a Court of Appeal, or as a Court of Revision, to find that, according to the evidence, the prisoner caused the death with the knowledge mentioned in cl. 4, for whether the death was caused with that knowledge or not was entirely a question of fact.

"As a Court of Appeal they could not have done so, in consequence of S. 407.

"As a Court of Revision they could not have done so, as the error was not one of law, nor was the sentence illegal.—See Ss. 403, 404, and 405 of the Code of Criminal Procedure.

"However wrong the Court may think that the Sessions Judge and Assessors were in acquitting of murder, they have no power, in our opinion, to correct the error. However inadequate they may consider the sentence, they have not, in our opinion, any power to enhance it, as the sentence is one which is authorized by law for the offence of which the prisoner was found guilty."

In the case of Sheikh Bazoo and others (8 W. R., 47), in which a Divisional Court of the Calcutta High Court was of opinion that, on the facts found by the Sessions Judge, and established in evidence, the prisoners should have been convicted and sentenced for murder, and not for culpable homicide not amounting to murder; and that on the authority of Gorachand Gope's case (5 W. R., 45, quoted in the foregoing), the conviction and sentence should be reversed, and the prisoners declared to be guilty of murder and sentenced to transportation for life; but the Court at the same time entertained doubts as to their competence in consequence of the judgment in the case of Torab Sheikh (5 W. R., 2, just quoted), and referred the question to a Full Bench; it was held by seven Judges, including the Chief Justice, that the High Court as a Court of Revision had no such authority.

Sir Barnes Peacock, C. J.:—"I cannot concur in thinking that the conviction of the prisoners of culpable homicide not amounting to murder can be set aside, and a conviction of murder substituted by this Court, either as a Court of Appeal or as a Court of Revision; and I am opinion that the case cannot be sent back for a new trial.

"One of the leading principles of the Code of Criminal Procedure is, that there can be no appeal for a judgment of acquittal, and that this Court cannot, as a Court of Revision, alter the finding of a Court of Session upon any question of fact.

"An appeal lies upon law or fact; revision is only in respect of matters of law, or too great severity of sentence on appeal. A judgment of acquittal cannot be reversed upon the ground that the evidence would have warranted the Judge in finding the prisoner guilty of a more aggravated offence than that of which he was convicted. If a prisoner is charged with murder, and also with culpable homicide not amounting to murder, with reference to one and the same act of killing, if he is convicted of culpable homicide not amounting to murder, he is substantially acquitted of murder, and the Court cannot upon appeal hold that the evidence was sufficient to warrant a conviction of murder, and alter the conviction accordingly, or reverse the finding and send the case back for a new trial.

In the case of Gorachand Gope, (5 W. R, 45), it was held that this Court, as a Court of Revision, might set aside a judgment of acquittal for error in law, and either pass a proper sentence or order a new

trial, according to the circumstances of the case. The case supposed was one in which the facts found would show that the acquittal was wrong in law, not that the evidence would have warranted a different finding on the fact."

(*Here follows a quotation from the judgment in that case*).

* * * * * * * * *

In the case of the Queen *vs.* Torab Sheikh (5 W. R., 2), this Court held, that by finding the prisoner guilty of culpable homicide not amounting to murder, the Sessions Judge and Assessors had, in substance and effect, acquitted him of culpable homicide amounting to murder, and consequently acquitted him as well as of an intention to cause death, as of the knowledge that the act done was so imminently dangerous as to bring the case within the provisions of cl. 4, S. 300 of the Penal Code."

(*Here follows a quotation from the judgment in that case*).

* * * * * * * * *

In that case the question had reference to cl. 4, S. 300. In this to cl. 3 of the same Section. If that decision is correct (and I cannot doubt that it is so), the principle laid down applies equally to cl. 3 as to cl. 4. The present case falls within S. 299; it does not fall within any of the exceptions to S. 300, still it is not necessarily a case of murder. It does not follow that a case of culpable homicide is murder, because it does not fall within any of the exceptions in S. 300. To render culpable homicide murder the case must come within the provisions of cl. 1, 2, 3, or 4 of S. 300. In the present case, it has been found that there was no intention to cause death. The case, therefore, does not fall within cl. 1. It is not contended that it falls within cl. 2 or cl. 4; consequently it is not murder unless it falls within cl. 3 of S. 300.

Was then the act done with the intention of causing bodily injury, and if so, was the bodily injury intended to be inflicted sufficient, in the ordinary course of nature, to cause death? The Judge has not found that the bodily injury intended to be inflicted was sufficient, in the ordinary course of nature, to cause death. He finds expressly that the case does not fall under any of the clauses of S. 300, and the facts found do not show that he was wrong in point of law in holding that the case did not fall within any of those clauses. If he had found that the act was done with the intention of causing bodily injury to the deceased, and that the bodily injury intended to be inflicted was sufficient, in the ordinary course of nature, to cause death, the facts so found would have shown that he was wrong in law in holding that the case did not fall within any of the clauses of S. 306: for the facts so found would have shown that it fell within cl. 3 of S. 300. If he had found that fact, the case would have come within the principle of Goracband Gope's case. Not having found the fact, the case comes under the rule laid down in the case of the Queen *vs.* Torab Sheikh, above cited. The evidence might have justified the Judge in finding the fact, but that merely shows that his finding did not come up to the point which the evidence would have justified; it cannot authorize this Court to look at the evidence for the purpose of reversing the acquittal of murder, and of convicting the prisoner of that offence.

The finding of the Judge that there was no such knowledge as would bring the case within cl. 2 or cl. 4, coupled with his omission to find that the bodily injury intended to be inflicted was not sufficient, in the ordinary course of nature, to cause death, is not tantamount to a finding that the injury intended was sufficient, in the ordinary course of nature, to cause death; nor can it authorize this Court to find that it was so, and to reverse the Judge's finding that the case did not fall within cl. 3, S. 300, which was included in his general finding that the case did not fall within any of the clauses of that Section. If the Court was right in Torab Sheikh's case, in holding that the Judge and Assessors, by finding the prisoner guilty of culpable homicide not amounting to murder, not only acquitted him of an intention to cause death, but also of the knowledge that the act done was so imminently dangerous as to bring the offence within cl. 4, it is clear that a similar finding in the present case must amount to an acquittal of an intention

to inflict such bodily injury as would be sufficient, in the ordinary course of nature, to cause death.

It is said that the Judge has not found that the injury intended to be inflicted was not sufficient, in the ordinary course of nature, to cause death. Suppose that he had expressly found that it was not sufficient, it is clear that this Court could not have altered his finding in that respect, for the purpose of altering his conclusion that the prisoner was guilty of culpable homicide not amounting to murder, or, in other words, of reversing his acquittal of murder, and of convicting the prisoners of that offence.

Suppose a Jury in a special verdict had found the facts as the Judge has done, it is clear that such a verdict would not have amounted to a verdict of guilty of murder, and that the Court could not have supplied the necessary fact by finding that the injury intended to be inflicted was sufficient, in the ordinary course of nature, to cause death.

Nor could the Court have presumed that the Jury intended to find that fact in the affirmative merely from their omission to negative it. It would be much more reasonable to infer (if the law allowed inferences at all in such a case) that the Jury considered that their omission to find in the negative would never be considered to amount to a finding in the affirmative.

I am clearly of opinion that this Court cannot add a fact to the finding of a Judge or Jury in the case of acquittal, even if the omission was contrary to the weight of evidence, any more than it can reverse or set aside a judgment of acquittal, if it is clearly contrary to the evidence.

The appeal will, therefore, be dismissed as regards the three prisoners named above.

Revision in cases of illegal sentence.

402. The Sudder Court,* in any case tried by the Court of Session† in which, upon a review of the abstract statement or calendar of prisoners punished without reference, it shall appear that the sentence passed is one which cannot lawfully be passed on a person convicted of the offence as stated in the abstract statement or calendar, shall annul the sentence, and shall certify to the Court of Session † the sentence which may lawfully be passed for such offence ; and thereupon the Court of Session† shall pass a new sentence according to law, and shall amend the record in accordance therewith.

* S. 19.
† S. 13.

Revision of trials.

403. The Sudder Court,‡ in any case tried before a Court of Session§ in which, upon a review of the abstract statement or calendar of prisoners punished without reference, it shall appear that there has been error in the decision of the Court of Session§ on a point of law, or that a point of law should be considered by the Sudder Court,‡ may call for the record, or such portion thereof as it may deem necessary, together with a report of the Judge's direction to the Jury, if the case have been tried by a Jury, and, upon reviewing the depositions of the witnesses, the direction of the Judge, and the conviction, may determine any point of law arising out of the case, and there-

‡ S. 19.
§ S. 13.

CH. XXIX. S. 404.

upon pass such order as to the Sudder Court shall seem right.

A Sessions Judge having on appeal reversed a conviction by a Magistrate, on the ground that the act charged did not constitute an offence, the Calcutta High Court held that he was in error, and that the alleged facts would amount to an offence under the Penal Code ; and, reversing his reversal of the Magistrate's order, directed the Judge to cause the accused to be re-taken and to re-hear the appeal. As the prisoner had not had an opportunity of arguing his case, owing to its having come before the High Court as a Court of Revision, the Court intimated that if the decision of the Magistrate be upheld by the Judge, the question of law will be submitted to a Full Bench, and the prisoner will have an opportunity of being heard.—Madaree Chowkeedar, 3 W. R., 2.

The Sessions Judge having found the facts not proved, there was no further hearing of this case ; but the rule of law laid down by the High Court in this case was subsequently followed in the case of Gorachand Gope (5 W. R., 45) quoted in page 206.

The Judicial Commissioner, Punjab, (2944, June 17th, 1862) has declined to interfere with the order of a Magistrate in which the error was not on law but on fact.

* S. 19.

† S. 13.

General power of revision by the Sudder Court.

404. The Sudder Court* may, on the report of a Court of Session† or of a Magistrate, or whenever it thinks fit, call for the record of any criminal trial, or the record of any

‡ S. 11.

judicial proceeding of a Criminal Court,‡ other than a criminal trial, in any Court within its jurisdiction, in which it shall appear to it that there has been error in the decision on a point of law, or that a point of law should be considered by the Sudder Court,* and may determine any point of law arising out of the case, and thereupon pass such order as to the Sudder Court* shall seem right.

The High Court can under S. 404 exercise jurisdiction upon petition of the party affected [Madras High Court, 1863] ; but it refused to call for the record, or the proceedings of the the Lower Court, until there appeared a reasonable *primâ facie* ground for doubting either the regularity of the proceedings or the legality or propriety of the sentence or order passed.—Subbaya Gaundan, 1 Madras, 138.

The evidence having shown that the party convicted by a Magistrate of an offence within his jurisdiction, had committed an offence beyond his jurisdiction, and triable exclusively by a Court of Session, the Agra Sudder Court quashed the conviction and ordered the commitment of the prisoner.—2 Agra, 374 ; see also Ramtohul Singh, 5 W. R., 65 ; Shumboo Roy *vs.* Ajail Aheer, 6 W. R., 49.

The evidence having been pronounced insufficient for the conviction of certain persons before the Court on appeal, the Court, as a Court of Revision, directed the release of non-appellants who had been convicted on the same evidence.—3 Agra, 169.

The appeal of a man convicted of dacoity (S. 395, Penal Code), and breaking Jail (S. 224), was dismissed, but the High Court finding that for the latter offence the Sessons Judge had not sentenced the prisoner to an *additional* term of imprisonment under S. 404, amended the sentence by *enhancing* it by an additional sentence of two years.—Dhoonda Bhooya, 8 W. R., 85.

Ss. 404 and 405 do not extend to preliminary enquiries or trials held by a Justice of the Peace.—*In re* Brae, 3 W. R., 64.

The High Court has no power under S. 404 or S. 405 to order the release of a person regularly convicted, because facts, subsequently brought to light, show that the conviction was the result of conspiracy. The Government should be moved in such a case.—Nussur Ali *vs.* Hart, 6 W. R., 42.

Sudder Court empowered to call for and examine records of Court of Session.

405. It shall be lawful for the Sudder Court* to call for and examine the record of any case tried by any Court of Session† for the purpose of satisfying itself as to the legality or propriety of any sentence or order passed, and as to the regularity of the proceedings of such Court. If it appear to the Sudder Court* that the sentence passed is too severe, the Sudder Court* may pass any mitigated sentence warranted by law. If the Sudder Court* shall be of opinion that the sentence or order is contrary to law, the Sudder Court* shall reverse the sentence or order and pass such judgment, sentence, or order as to the Court shall seem right, or, if it deem necessary, may order a new trial.

* S. 19.

† S. 13.

In the case of Ramdhan Mundul (4 W. R., 15), it was held that S. 405 referred only to cases tried by Courts of Session, as Court of Original Jurisdiction, and not as Courts of Appeal, but this opinion was overruled in the case of Bissumbur Shaha (6 W. R., 7), in which a Court of five Judges held that, reading S. 405 with S. 428, "Court of Session," as used in S. 405, would mean that Court both in its Original and Appellate Jurisdictions.

On four cases of appeal, Divisional Courts of the Calcutta High Court have ordered new trials, because the facts of which the appellants had been convicted, constituted murder and showed the commission of a higher degree of offence than that (culpable homicide not amounting to murder) of which they had been found guilty. The appellants had not been called to plead to charges of murder in the Sessions Court.—Beria Bazikor, 3 W. R., 38; Mahommed Elim, 3 W. R., 40; Soombar Goallah, 4 W. R., 32; Pooshoo and another, 4 W. R., 33; see also 6 Agra, 60. But the law has since been laid down otherwise. In the case of Torab Sheikh (5 W. R., 2), it was held that in finding a prisoner guilty of culpable homicide not amounting to murder, the Sessions Judge and Assessors, in substance and effect, acquitted him of murder, and that however wrong the High Court may think the acquittal of murder, it has no power to correct the error. This interpretation was accepted by seven Judges in the case of Sheikh Bazoo, 8 W. R., 47. All these cases had been tried in the Sessions Courts with the aid of Assessors.

In the case of Kalu Mal (7 W. R., 103), which had been tried with the aid of Assessors, the Calcutta High Court reversed the conviction and ordered a new trial, because the Sessions Judge had allowed evidence to be given as to the previous bad character of the prisoner; but in the case of Phoolchand (8 W. R., 11), the Court refused to interfere because there was ample evidence on the record of the prisoner's guilt. The Court, however, remarked that had the trial been held by Jury it would have ordered a new trial.

The Madras High Court refused to call for the record of the proceedings of a Sessions Judge until there appeared a reasonable *primâ facie* ground for doubting the regularity of those proceedings, or the legality or propriety of the sentence or order passed.—Subbaya Gaundan, 1 Madras, 138. The release of non-appellants was ordered, as the evidence against them had been pronounced insufficient for the conviction of certain persons who had appealed.—3 Agra, 179.

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Ss. 406—408.

Proceedings of a case revised by Sudder Court to be certified to Court in which conviction was had.

406. Whenever a case shall be revised by the Sudder Court* under this Chapter, the Sudder Court* shall certify its decision or order to the Court in which the conviction was had, or by which the order was passed, and such Court shall thereupon make such orders as are conformable to the decision of the Sudder Court,* and, if necessary, amend the record in accordance therewith. Provided that, in any case which shall be revised by the Sudder Court* under this Chapter, it shall not be competent to the Sudder Court* to reverse the verdict of the Jury, or, except as provided in this Chapter, to alter or reverse the sentence or order of the Court below.

Proviso.

* S. 19.

CHAPTER XXX.—Ss. 407—428.

APPEALS.

No appeal in cases of acquittal.

407. There shall be no appeal from a judgment of acquittal passed in any Criminal Court.†

† S. 11.

The Calcutta High Court, by a decision of a Full Bench, has laid down that S. 407 does not apply to any case which, as a Court of Revision, it may think it right to take up.—Gorachand Gope, 5 W. R., 45, quoted at page 206.

Appeals in what cases in trials by Jury or with Assessors.

408. Any person convicted on a trial held by a Court of Session‡ may appeal to the Sudder Court.§ If the conviction was in a trial held with the aid of Assessors, the appeal may be on a matter of fact as well as on a matter of law. If the conviction was on a trial by Jury, the appeal shall be admissible on a matter of law only.

‡ S. 13.

§ S. 19.

Petitions of appeal to the Sudder Court must be presented within sixty days immediately following, and exclusive of the day on which the sentence or order appealed against is passed, but the Court may admit an appeal after time on sufficient cause shown.—S. 415.

Ss. 417, 419—422 lay down the procedure to be followed by an Appellate Court and its powers, and S. 426 restricts the power of interference on account of any error or defect in the charge or in the proceedings on trial, unless the accused shall have been sentenced to a larger amount of punishment than could have been awarded for the offence of which, in the judgment of the Appellate Court, the accused person ought on the evidence to have been found guilty, or unless, in the judgment of the Appellate Court, the accused person shall have been prejudiced by such error or defect.

Sir Barnes Peacock, *C. J.*, in the case of Elahee Bukhsh (5 W. R., 80), laid down the power of the High Court as an Appellate Court from convictions on trials by Jury in the following terms:—

By S. 379 of the Code of Criminal Procedure, it is enacted that, in a trial by Jury, the Judge will sum up the evidence on both sides, and the Jury shall then deliver their finding upon the charge, and a statement of the Judge's direction to the Jury shall form part of the record. There can be no doubt that that Section requires the Judge to sum up properly, and there would be very great danger in holding that there is no remedy by appeal against a verdict of guilty, if it appears clearly to the High Court that a failure of justice has been caused by improper advice upon a question of fact, or by an omission to give that advice which a Judge, in the exercise of sound judicial discretion, ought to give upon questions of fact, or as to the degree of credit to be given to particular witnesses.

It appears to me that it amounts to an error in law in the summing up, which, on appeal, is a ground for setting aside the verdict, subject, however, to the limitation provided by the Code of Criminal Procedure in Ss. 439 and 426 that the Appellate Court is satisfied that the accused person has been prejudiced by the error or defect, and that a failure of justice has been occasioned thereby.

If a Judge in a Criminal trial in the Mofussil were to tell the Jury that in his opinion the evidence was sufficient to justify them in finding the prisoner guilty, in a case, in which, if the Judge had been trying the case with the aid of Assessors, the High Court would, on appeal, have reversed his judgment if upon the same evidence he had convicted the prisoner, I have no doubt that the Court ought on appeal to set aside a verdict of guilty found by the Jury notwithstanding the advice was merely as to the weight of evidence.

So, if a Judge, instead of advising a Jury not to convict upon the mere uncorroborated evidence of an accomplice, were to advise them to convict upon such evidence, or were to tell them that the uncorroborated evidence of an accomplice given under a tender of pardon was admissible, and that it was for them alone to form their opinion upon it, that a conviction founded upon such evidence would be legal, and that such evidence, without corroboration, might be acted upon with as much safety as that of any other witness, I think the error in the direction would form a good ground of appeal.

Now, there are errors of omission as well as errors of commission, and I have no doubt that it would form a good ground of appeal against a verdict of guilty if a Judge were to call the attention of a Jury to all the evidence against the prisoner, and to omit altogether to allude or call attention to the evidence in his favor. By such a summing up, the Judge would not comply with the requirement of the Code of Procedure, and a verdict found upon such a summing up ought, I think, to be set aside if the Court should be of opinion that the evidence was not sufficient to justify a conviction. I put the case merely to try the principle. It appears to me that such an omission, or an omission to follow a practice which is universally adopted by the Judges in England, and is described by Lord Abinger to be "a practice which deserves all the reverence of law," would be a ground of appeal against a conviction upon a verdict of guilty based upon such evidence alone, and found by a Jury upon such a summing up. So also I think it would be error in a summing up if a Judge, after pointing out the danger of acting upon the uncorroborated evidence of an accomplice, were to tell the Jury that the evidence of the accomplice was corroborated by evidence of a fact which did not amount to any corroboration at all. When Lord Ellenborough said, "Judges in their discretion will advise a Jury not to believe the evidence of an accomplice unless he is confirmed, or only so far as he is confirmed," he must have intended that it was their duty to do so. "Discretion," says Lord Mansfield, "when applied to a Court of Justice, means sound discretion guided by law. It must be governed by rule, not by humour. It must not be arbitrary, vague, and fanciful, but legal and regular."

But although I am of opinion that the Legislature intended that the Sudder Court should have the power of setting aside a verdict of guilty pronounced by a Jury upon an erroneous or defective summing up of the

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evidence by the presiding Judge, yet I think that it was not their intention that a verdict of guilty should be set aside in every case in which there is a defective or erroneous summing up. It was their intention to provide protection for the innocent, but not chances of escape for the guilty. The power, therefore, of reversing a finding or of setting aside a trial was carefully guarded by Ss. 426 and 439 of the Code of Criminal Procedure.

The Code of Criminal Procedure provides that, if a person be convicted on a trial by Jury, the appeal shall be admissible only upon a matter of law. But it certainly is not against the principle, or even the letter of the Code, that the Court should have power to set aside a verdict of guilty for an insufficient or defective summing up of the evidence in a case in which, in their judgment, the verdict is not warranted by the evidence.

If a verdict and conviction could not, under such circumstances, be set aside, trial by Jury in the Courts of Sessions in this country would be fraught with the most dangerous consequences; on the other hand, if every convict against whom a verdict of guilty is pronounced by a Jury, has a right to have that verdict set aside upon appeal, and to obtain his discharge whenever it can be shown that the presiding Judge has not properly directed the Jury as to the degree of weight which ought to be given to particular evidence, a wide door would be thrown open for the escape of guilty men, and the due administration of the Criminal Law of this country would be placed in the greatest jeopardy in those districts to which trial by Jury has been extended. A verdict of acquittal by a Jury cannot be reversed, and ample protection is afforded to prisoners by allowing the High Court to reverse a verdict of guilty for any error or defect in summing up, whenever the Court is of opinion that a failure of justice has been thereby occasioned.

It has been suggested that the word "reverse" means to change to the contrary, and that to reverse a verdict of guilty is to change it into a verdict of not guilty; and that although the Court, as a Court of Revision, may grant a new trial, as a Court of Appeal it has not power to do so.

But I am of opinion that the word "reverse" is not used in so restricted a sense. The word "reverse" in Ss. 419 and 426 is applicable not merely to findings or verdicts, but also to sentences, and in S. 439 the same word is used with reference to judgments only. But if the word "reverse," when applied to a verdict, means to "change or turn into the contrary," it must also mean the same when applied to judgments or sentences. Thus, a judgment of conviction must be turned into a judgment of acquittal. S. 420 shows that such was not the meaning of the word when applied to sentences, even if without that Section it would have been possible to put such a construction upon it.

Section 405.

The Court, upon revision, may grant a new trial. But the person convicted cannot obtain a revision as a matter of right.

I think that the Court has as great a power in this respect on appeal as it has on revision, and that it may set aside a verdict of guilty and conviction founded upon it for any error in law, such as a misdirection of the Judge in point of law, or an error or defect in the summing up of the evidence, or the improper rejection or admission of evidence, provided the Court is of opinion that the person convicted has been prejudiced by the error or defect, and that a failure of justice has been occasioned thereby. I am of opinion that the word "reverse" is used in its legal sense, and means to make void, to set aside, or annul.

The Legislature, when giving a power to a Court of Revision to order a new trial, may have thought it necessary to do so by express words, as a Court of Revision may act of its own motion and without any application or consent of the person convicted. But an appeal must be preferred by the person convicted, and it seems to follow that if he asks to have a finding and conviction set aside for error in law, he cannot set up that conviction in bar of a second trial.

If a new trial may be granted for error in law by a Court of Revision, even without the prisoner's consent, can it be doubted that the same Court,

as a Court of Appeal, may grant a new trial when an appeal is preferred by a prisoner against a verdict and conviction?

It appears to me that, in all cases in which a finding of guilty is set aside upon appeal, the Court, if it considers it necessary, may order a new trial.

In some cases it may be necessary, for example, where evidence is improperly rejected, or where, for other reasons, the Appellate Court is unable to form a correct opinion as to the guilt or innocence of the appellants. But when the finding and conviction are objected to, upon the ground that the Judge did not properly direct the Jury as to the degree of weight which ought to be given to the evidence, it appears to me that this Court, sitting as an Appellate Court, is not necessarily bound to send the case back for a new trial. If the Court are of opinion that the evidence could not, in any proper view of the case, support a conviction, it would be worse than useless to send the case back for a new trial in order that a Jury might have the opportunity of convicting upon such evidence under a proper summing up.

S. 419 of the Code of Criminal Procedure allows the Appellate Court to alter or reverse the finding. It does not compel them to send the case back for a new trial in cases in which they see that it is useless and may be injurious to do so. Regard for the prosecutor and witnesses forbids it; the prisoner is amply protected by the Section which prohibits an appeal from a judgment of acquittal, and a failure of justice is sufficiently guarded against by allowing the Court to order a new trial whenever upon appeal they are satisfied that there has been a failure of justice. It would tend to defeat, and not to promote, justice if a verdict of guilty were set aside and a new trial granted, for a defective summing up, with reference to the weight of evidence in a case in which the High Court would, upon the evidence given on a trial, have affirmed a conviction, if, instead of a trial by Jury, the trial had been before a Judge and Assessors. In determining whether the verdict ought to be set aside, and a new trial granted for a defective summing up of the evidence, it appears to me that the question to be considered is not whether upon a proper summing up of the whole evidence a Jury might possibly give a different verdict, but whether the legitimate effect of the evidence would require a different verdict. If the evidence is such that the High Court would have affirmed the conviction if the trial had been before a Judge and Assessors, I think that they ought not to set aside a verdict of guilty found by a Jury merely because the Judge has not in summing up given proper caution or advice to the Jury as to the weight which they might properly give to the evidence. If the verdict is set aside for such a cause upon the ground that the error of the Judge has caused a failure of justice, and that the prisoner has been prejudiced thereby, it may be necessary in some cases to grant a new trial. But if the Court is satisfied that a failure of justice has been caused, and that the evidence is wholly insufficient to support any conviction against the prisoner, and would upon the same evidence have reversed a conviction if the case had been tried without the intervention of a Jury, there is no necessity, and I think it would be improper to grant a new trial. In such a case, the Court having set aside the verdict, may order the prisoner to be discharged.—Elahee Buksh, 5 W. R., 80.

In summing up a case to the Jury, the Sessions Judge pointed out that there was no legal evidence against certain prisoners, but the Jury nevertheless convicted them. On their appeal, the Calcutta High Court acquitted them on the ground that a conviction upon no evidence is wrong in point of law. As regards other prisoners, the Sessions Judge had directed the Jury that there was some slight evidence, though not such as, in his opinion, to warrant a conviction, and they also were convicted. The High Court remarked that, had it agreed with the Judge that there was some evidence against the prisoners, however dissatisfied with the verdict of the Jury, the Court would have had no power to interfere, but being of opinion that there was no evidence, the Court found that the convictions were illegal, and set them aside.—Chand Bagdee, 7 W. R., 6.

In the case of Choonee and others (5 W. R., 13), the Calcutta High Court held that it could interfere with the verdict of a Jury only if there had been a positive misdirection by the Judge to the Jury, or if there was a

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total absence of legal evidence necessary to support the conviction, such failure amounting to error in matter of law. Further, that the omission of the Judge to point out to the Jury the weakness of the evidence, and the possibility of the deed having been committed by others than the prisoners, did not amount to positive misdirection.

Technical objections to Criminal charges, particularly on the ground of the want of a proper specification of details, should be taken before the conclusion of a trial, when, if necessary, the Judge may amend the charge. If not so taken, the objection ought not to be allowed, unless it should appear that some failure of justice has been caused by the irregularity complained of.—Ramasawing, Reference from Recorder, Moulmein, 5 W. R., 1.

In the case of Kali Churn Sonar and others (6 W. R., 84), the High Court refused to interfere, although there had been a misdirection, because the confessions of the prisoners before the Magistrates were sufficient for their conviction.

In the case of Mussamut Jommee and another (8 W. R., 16), the High Court acquitted one of the prisoners, holding that he had been prejudiced by a misdirection, inasmuch as the Judge had not brought prominently before the Jury certain facts which were favorable to him.

409. Any person convicted on a trial held by the Magistrate of the District* or other Officer exercising the powers† of a Magistrate, or required by such Magistrate or other Officer under Section 295 or Section 296 of this Act to give security for good behaviour, may appeal to the Court of Session‡ to which such Magistrate or other Officer is subordinate.

Appeal from Magistrates.

* Ss. 14, 18.

† S. 16.

‡ S 13.

S. 411 contains a proviso to this Section, by declaring that there shall be no appeal against a sentence of imprisonment not exceeding one month, or fine not exceeding fifty Rupees.

An appeal from a conviction passed by a Magistrate under a local law [*e. g.*, Act XXXI. 1860, S. 5] lies to the Sessions Judge, as S. 21 of the Code extends its operation to offences defined in, or made punishable by, local laws.—Calcutta High Court, 713, 1863; also Jud. Com. Punjab, April 10th, 1863. Similarly, with regard to a conviction under a special law, Act V. of 1861.—Thakoor Doss, 5 W. R., 22. A Sessions Judge cannot review his judgment passed on an appeal. He can, if he thinks proper, submit his proceedings for the orders of the Superior Court.—Agra Sudder Court, November 24th, 1864.

Orders passed under Ss. 62, 63, Criminal Procedure, not being convictions, are not appealable [Madras High Court, 1863]; nor an order for maintenance under S. 316 [Jud. Comr., Punjab, 1863]; nor an order enforcing compliance with a previous order for maintenance (Gholam Hossein Chowdry, 7 W. R., 10); nor an order of a Magistrate under S. 280 requiring penal recognizance to keep the peace (Agra Sudder Court, Kasheenath, November 7th, 1863]. A Sessions Judge has no authority to cancel the order of a Magistrate except on appeal. Such an order, if illegal, should be made the subject of reference to the High Court under S. 434.—Calcutta High Court, 885, 1863. On appeal from the order of a Magistrate, a Sessions Judge commuted the sentence of imprisonment to one of fine, but awarded a sentence of nine months' imprisonment in default of payment of fine. This alternative sentence was reduced by the Bombay High Court to six months, that being the maximum that a Magistrate could award, the Court apparently holding that a Sessions Judge on appeal could not pass any sentence that the Magistrate himself could not have passed.—Hurree bin Wittojee, 1 Bombay, 139.

A Sessions Judge is not competent to hear an appeal against an order passed by a Subordinate Magistrate.—3 W. R, 3 C. L.

Appeal from Justices of the Peace.

410. Any person convicted and sentenced by any Justice of the Peace exercising jurisdiction under the Statute 53 George III, c. 155, s. 105,* or under Act VII. of 1853* *(to extend the jurisdiction of Magistrates under the 53 George III, c. 155, s. 105, in cases of assault, forcible entries, and other injuries accompanied with force, not being felonies)*, or under Section 163 or 165 of this Act, may appeal to the Court of Session† having jurisdiction at the place at which the appeal would have been heard had the sentence been passed by a Magistrate subordinate to such Court. Cases appealed under this Section shall not be afterwards liable to revision by means of a writ of *certiorari*. Provided that nothing in this Section shall be held to take away the power of quashing any conviction by means of a writ of *certiorari* in any other case than when there has been such an appeal as aforesaid.

* See App. B.

† S. 13.

33 George III. c. 52, s. 153, declares that all convictions, judgments, orders, and other proceedings which shall be had, made, or pronounced by, or before any Justice or Justices of the Peace, within any of the British Settlements or territories in India, out of the Court of Oyer and Terminer within and for the same, shall and may be removeable by writ of *certiorari*, into the Court of Oyer and Terminer and Gaol Delivery of and for the same Presidency, at the instance of any of the parties thereby affected or aggrieved, at any time within the space of six calendar months next after the making or pronouncing thereof respectively.

An appeal lies to a Sessions Judge against every sentence passed by a Magistrate being a Justice of the Peace. S. 411 does not restrict the power of the Appellate Court in such cases.—Jud. Comr., Punjab, Cir. 97, September 9th, 1862.

No appeal in certain Criminal cases.

411. In all cases in which a Court of Session‡ or the Magistrate of a District§ or other Officer exercising the powers‖ of a Magistrate shall pass a sentence of imprisonment not exceeding one month, or of a fine not exceeding fifty Rupees, no appeal shall be allowed.

‡ S. 13.

§ Ss. 14, 18.

‖ S. 16.

If a sentence of imprisonment *and* fine be passed, although both sentences be within the limits specified in S. 411, there will be an appeal (Jud. Comrs., Punjab and Central Provinces); but the fact that imprisonment is awarded in default of payment of fine will not alone give a right of appeal.—Agra Sudder Court, September 1st, 1863.

The Bombay High Court, in the case of Reg. *vs.* Shunker Venkajee (3 Bombay, 15. *Crown Cases*) has interpreted the law differently. The Court declared that S. 411 cannot be construed to mean that an appeal lies in all cases in which a combined sentence of fine and imprisonment is passed: for it is absurd to suppose that it was intended that an appeal should lie where a prisoner was sentenced to suffer imprisonment for one day, and to pay a fine of one Rupee, but not where he was sentenced to suffer imprisonment for 29 days. In the case before the Court, the prisoner, who was sentenced to suffer imprisonment for fifteen days, and to pay a fine of 25 Rupees, or in default to suffer

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imprisonment for a further period of fifteen days, was held to have no right of appeal.

Where the prisoner was in three separate cases sentenced in each to suffer fifteen days' imprisonment, it was held that because these sentences in the aggregate amounted to more than one month, he would have no right of appeal, (Morly Sheikh, 6 W. R., 51) ; but where on the same evidence a Magistrate passed two sentences, it was held that the sentences were cumulative and illegal, but the Court added that supposing the two sentences to have been legal, inasmuch as the sentences were on the same evidence, and the aggregate of punishment was beyond the limit to which the power of appeal is restricted, an appeal would and lie.—Meelan Khalifa *vs.* Dwarkanauth Goopto, 1 W. R.. 7

Jurisdiction over the appeal of one person convicted by a Magistrate does not give a Sessions Judge constructive jurisdiction over the convictions of other prisoners whose sentences under S. 411 may not be appealable.—Calcutta High Court, 922, 1864. S. 411 does not apply to sentences passed by a Magistrate acting as Justice of the Peace. All such orders are, under S. 410, appealable to the Sessions Judge.—Jud. Comr., Punjab, Cir. 97, September 9th, 1862.

Appeals from Officers exercising powers less than those of a Magistrate.

412. Any person convicted on a trial held by an Officer exercising powers* less than those of Magistrate, may appeal to the Magistrate of the District† or other Officer exercising the powers‡ of a Magistrate who shall have been empowered by the Government to hear such appeals.

* S. 22.

† Ss. 14, 18.

‡ S. 16.

The Bombay Government, by a Notification, dated 20th May 1863, declared that " an Assistant Collector, in charge of the Collectorate, is, and shall be, during that time, the Chief Officer charged with the executive administration of the District in Criminal matters ;" and in the case of Reg. *vs.* Bhaishunker Hariram, the High Court held that this order authorized an Assistant Collector, in charge of a Collectorate, to hear appeals, as he was, by virtue of that Notification, Magistrate of the District within the terms of S. 14. The Court further held that it was not requisite that the Government should in every case specially empower a Magistrate, not being the Magistrate of the District, to hear appeals under S. 412, but that it might be done, once for all, by proclamation.—3 Bombay, 18. *Crown Cases.*

The Calcutta High Court has, by its Circular 9, 1867, laid it down, as a general rule, that petitions of appeal against the sentences or orders of Sessions Judges, presented to Officers in charge of Jails, be forwarded by such Officers direct to the Registrar of the High Court of Judicature, intimation of the fact being at once given in each instance and in the annexed form to the Judge whose sentence or order is appealed against.

Petitions of appeal must be presented within the period allowed for appeal, as provided in S. 413 of the Criminal Procedure Code, and must be accompanied by a copy of the sentence or order appealed against, as provided by S. 416.

Petitions not presented in time, or not accompanied as above, are not to be transmitted to the Registrar, but should be returned to the petitioner, with an endorsement by the Officer in charge of the Jail showing the date of presentation.

To

THE SESSIONS JUDGE OF

The undersigned begs to report, for the information of the Sessions Judge, that an appeal by the prisoner
against the Judge's sentence or order, dated
and noted at foot, has this day been presented to the Officer in charge of the Jail, and has been forwarded to the High Court, as required by S 418 of the Code of Criminal Procedure.

Officer in charge of the Jail.

Except on appeal, the Magistrate of a District cannot reverse or modify the order of a Subordinate Magistrate.—Calcutta High Court, 875, 1863.

A Sessions Judge is not competent to hear an appeal against an order passed by a Subordinate Magistrate.—3 W. R., 3. C. L.

There is no appeal against an order passed by a Subordinate Magistrate under S. 270, Criminal Procedure, awarding amends to a person for a frivolous and vexatious complaint brought against him, as such an order is not a conviction on trial.—*Id.* 904, 1863. Agra Sudder Court, September 5th, 1864.

Appeals from orders under Chapter X.

413. any person convicted by any Civil Court under Chapter X. of this Act, may appeal to the Court to which decrees or orders made in such Court are ordinarily appealable, subject to the rules provided in Sections 416, 417, 418, 419, and 421 of this Act. Petitions of appeal under this Section, if presented to any District Court, must be presented within thirty days immediately following and exclusive of the day on which the sentence or order appealed against is passed. Petitions of appeal to the Sudder Court* must be presented within sixty days calculated as above. The Sudder* and District Courts may admit an appeal after the time herein provided, on sufficient cause shown.

* S. 19.

Unless otherwise provided, no appeal to lie from any other or sentence of a Criminal Court.

414. Unless otherwise provided by this Act, or by any other law for the time being in force, no appeal shall lie from any order or sentence of a Criminal Court.†

† S. 11.

Period for presenting petitions of appeal.

415. Petitions of appeal to the Court of Session‡ or to any Court subordinate to the Court of Session‡ must be presented within thirty days immediately following, and exclusive of the day on which the sentence or order appealed against is passed. Petitions of appeal to the Sudder Court§ must be presented within sixty days calculated as above. The Sudder Court§ and the Court of Session‡ may admit an appeal after the time herein provided on sufficient cause shown.

‡ S. 13.

§ S. 19.

The late Calcutta Sudder Court Cir., May 6th, 1862, ordered that, as a rule, whenever a petition of appeal is presented to a Sessions Judge for submission to it, if the case so appealed has been tried with the aid of Assessors, all the proceedings connected therewith should be forwarded, but should the case have been tried by Jury, it is necessary to forward only the petition of appeal.

Copy of judgment to accompany petition.

416. Every petition of appeal shall be accompanied by a copy of the sentence or order appealed against.

As an appeal against the verdict of a Jury is restricted to points of law the petition should state specifically in what respect the law has been contravened.—Gopal Bhereewallah and another, 1 W. R., 21.

417. It shall be competent to the Appellate Court to reject the appeal if, on a perusal of the petition of appeal, and the copy of the sentence or order appealed against, and after hearing the appellant or his counsel or agent if they appear, the Court shall consider that there is no sufficient ground for questioning the correctness of the decision, or for interfering with the sentence or order appealed against. Before rejecting the appeal, the Court may call for and peruse any part of the proceedings of the Lower Court, but shall not be bound so to do.

Appellate Court may reject petition of appeal.

"Agent." S. 432 declares that "every person charged before any Criminal Court with an offence may of right be defended by Counsel or authorized Agent." Act XX. of 1865, S. 40, modifies this by requiring "the permission of the presiding Judge or Magistrate," if the authorized agent be not a Pleader or Mookhtar duly qualified under that Act.

418. If the party appealing be in Jail in pursuance of the sentence or order appealed against, he shall be at liberty to present his petition of appeal and the copy of the sentence or order appealed against, to the Magistrate or other Officer in charge of the Jail, who shall thereupon forward the petition to the proper appellate authority.

Appeal by party in Jail.

The Officer in charge of the Jail is required to send intimation to the Judge whose sentence or order is appealed against.—See Calcutta High Court, Cir. 9, 1867, quoted in note to S. 415, *ante*.

The fullest opportunity should be given to prisoners to execute Powers of Attorney to whomsoever they please, and without reference to the mode or circumstances by which they might be influenced to do so.—Shaikh Dadabhai, 1 Bombay, 16.

419. The Appellate Court, after perusing the proceedings of the Lower Court, and after hearing the plaintiff or his counsel or agent, if they appear, may alter or reverse the finding and sentence or order of such Court, but not so as to enhance any punishment that shall have been awarded.

Appellate Court may call for the proceedings of Lower Court.

An Appellate Court, in passing its order on an appeal, should be careful to bear in mind the terms of Ss. 426 and 439.

The Calcutta High Court, by a decision of a Full Bench, has laid down that S. 419 does not apply to any case which, as a Court of Revision, it may think it right to take up.—Gorachand Gope, 3 W. R., 45.

As an Appellate Court a High Court can only alter or reverse the finding and sentence or order of the Lower Court, but it has larger powers as a Court of Revision (see Ss. 404, 405), and it not unfrequently acts as a Court of Revision on the appeal of a convict.—See notes to Ss. 405 and 408.

The final order of an Appellate Court must, under S. 429, be written in the vernacular of the presiding Officer, together with his reasons for making or passing the same.—Calcutta High Court, 644, 1865.

A Sessions Judge, after dismissing an appeal, has full power to direct that a portion of the fine paid by the appellant shall be awarded as compensation, under S. 44, to the complainant, even though the Magistrate has already distinctly refused to award such compensation.—Calcutta High Court, 766, 1864.

A Magistrate convicted a prisoner of two offences, passing two distinct sentences. On appeal, the Sessions Judge acquitted him of one offence, but increased the sentence passed on the other offence of which he convicted the prisoner. The Agra Court held that the Judge acted illegally in enhancing the punishment awarded by the Magistrate for the offence of which he was convicted.—*5* Agra, *153*.

The Calcutta High Court on the appeal of the convict cancelled as illegal a sentence of 10 years' transportation for abetment of murder [Ss. 109, 302, Penal Code], and directed the Sessions Judge to pass a legal sentence.—Jan Mahomed and others, 1 W. R., 49. See also remarks of Sir Barnes Peacock *C. J.* quoted in page 208, *ante*.

On an appeal from the order of a Magistrate, a Sessions Judge commuted the sentence of imprisonment to one of fine, but awarded a sentence of nine months' imprisonment in default of payment of fine. This sentence was reduced by the Bombay High Court to six months, the maximum that a Magistrate could award, the Court apparently holding that an Appellate Court cannot pass any sentence that the Lower Court could not have passed.—Hurree Bin Wittojee, 1 Bombay, 139.

Although an Appellate Court may find that on the evidence on the record the prisoner should have been convicted of some offence other than that of which he has been convicted, it should not interfere with the conviction and sentence, unless the offence is beyond the jurisdiction of the Lower Court, or the prisoner has been prejudiced by the error or omission, or the sentence is illegal or immoderate for the offence of which he should have been convicted. —See note to S. 426.

The Judicial Commissioner, Punjab, has held that the competency of an Appellate Court to maintain the sentence of the Lower Court, while altering its finding, depends on the determination of the question, whether the accused has been prejudiced by the error in the charge or not.

The signature of two Judges necessary.

420. The sentence or order of the Sudder Court,* modifying, amending, or reversing the sentence or order of a Lower Court on appeal or revision, shall be signed by at least two Judges of such Sudder Court.*

* S. 19.

This Section has been modified by S. 36 of the Letters Patent for the High Courts of Judicature at Calcutta, Madras, and Bombay, dated the 28th December 1865 :—

"And we do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at Fort William in Bengal, (or Madras or Bombay) in the exercise of its Original or Appellate Jurisdiction, may be performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose, under the provisions of the Thirteenth Section of the aforesaid Act of the Twenty-fourth and Twenty-fifth Years of Our Reign; and if such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be equally divided, then the opinion of the senior Judge shall prevail."—See case of Sheikh Soobhance, 6 W. R., 88.

Act XV. of 1862, S. 2, declares that "when the Sudder Court in any part of the territories to which the Code of Criminal Procedure has been, or shall be, extended shall consist of a single Judge, such Judge shall have

all the powers of two or more Judges of the Sudder Court under Ss. 398, 401, and 420 of the said Code "

The High Court has no power to review its judgment in a Criminal case. —Godai Raout, 5 W. R., 61.

421. In any case in which an appeal is allowed, the Appellate Court may, pending the appeal, order that the sentence be suspended, and if the appellant be in confinement for an offence which is bailable, may order that he be released on bail.

Appellate Court may suspend sentence pending appeal, and release defendant on bail.

The provisions of this Section, it should be noted, apply to Appellate Courts, and apparently not to Courts of Revision under Chapter XXIX.

Cash or Government Promissory Notes may be received in lieu of bail.—S. 437.

By the practice of the Calcutta High Court, an order passed by a Subordinate Court may be suspended, or a convict may be released on bail by order of *one* of its Judges.—Jhaloo Sirdar, Suth. Rep., 1864, p. 18.

The Calcutta High Court held that a Sessions Judge acted rightly in refusing, pending his appeal, to bail a person convicted of a non-bailable offence, as he was not competent to pass such an order. He was, however, informed that if he saw reason to suspend the sentence pending the appeal, he was at full liberty to do so, the prisoner remaining in *hajut* (*i. e.*, in custody), instead of in rigorous imprisonment.—Koralee Kinkur Mookerjea.—3 W. R., 57.

The period during which a sentence may be suspended pending appeal is not to be reckoned in calculating the term of imprisonment, if the appeal be rejected.—Madras High Court, see note to S. 386.

422. In any case in which an appeal has been allowed, it shall be competent to the Appellate Court, if it think further enquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused to be necessary, to direct such enquiry to be made and additional evidence to be taken. The result of the further enquiry and the additional evidence shall be certified to the Appellate Court, and the Appellate Court shall thereupon proceed to pass such judgment, sentence, or order as to such Court shall seem right.

Appellate Court may direct further enquiry, &c.

The power of ordering further enquiry to be made can be exercised by a single Judge of the High Court.—Hurry Proshad, 6 W. R., 85.

Any proceedings involving further enquiry, or the taking of additional evidence, should be promptly completed, in order that the course of justice may not be interrupted more than is absolutely unavoidable.—Calcutta High Court, 11, 1865.

A case of "giving false evidence" [S. 193, Penal Code] was remanded by the Calcutta High Court for evidence as to the administering to the appellant of a solemn affirmation under Act V. of 1840.—Munwar Khan, 4 W. R., 24.

The Agra Sudder Court [May 5th, 1863] informed a Sessions Judge that, acting as an Appellate Court, he could not send for and examine witnesses, inasmuch as the procedure in appeal does not contemplate such: 1*st*, because the preceedings in appeal are not a trial before the Court of Session; 2*nd*, because the law requires that the witnesses for the prosecution shall be examined in the presence of the accused, who under existing circumstances is not before the Court when the appeal is

heard; *3rd*, because S. 422 distinctly lays down the procedure to be followed for taking additional evidence.

The Calcutta High Court [*Peacock, C. J., Seton-Karr, Louis S. Jackson, E. Jackson, J. J., Kemp, J. dis.*] delivered the following judgment as to the power of an Appellate Court acting under S. 422 :—

"It appears to us that the Sessions Judge has power to enhance the punishment awarded by the Joint-Magistrate.

"If an Appellate Court can do justice without calling for additional evidence, the case falls within S. 419, and the sentence or imprisonment cannot be enhanced; but when an Appellate Court, acting in good faith, thinks it necessary to call for further enquiry or additional evidence, the case falls under S. 422; and in that case the Appellate Court is required to pass such sentence as it shall think right. There is nothing in S. 422 to prevent the Court from enhancing the punishment awarded by the Lower Court. The sentence is a new sentence of the Appellate Court, for which that Court is responsible, and not a mere modification of the sentence of the Lower Court.

"An Appellate Court would not be justified in requiring fresh evidence, merely for the sake of enabling it to pass a new sentence, and thereby to enhance the punishment. It can do so easily, when the ends of justice require a further enquiry or fresh evidence to be taken upon a point bearing upon the guilt or innocence of the accused.

"We concur with Mr. Justice L. S Jackson in thinking the point or points, upon which further enquiry or additional evidence is considered necessary, should be distinctly stated; and we are of opinion that the accused is entitled to be present at the enquiry, and to cross-examine the witnesses, and also, if he wishes, to adduce evidence in answer: but we cannot agree with the learned Judge that, if the order be merely to examine witnesses for the defence, the examination of such witnesses ought not to enable the Appellate Court to enhance the punishment. The evidence of such witness is clearly upon a point bearing upon the guilt or innocence of the accused, and brings the case within S. 422.

"Suppose a Magistrate should refuse to hear the prisoner's witnesses, the Sessions Judge would, no doubt, upon appeal, order those witnesses to be examined as bearing upon the guilt or innocence of the accused.

"The witnesses might be persons of character and respectability, and, when called, might, so far from proving the prisoner's innocence, show that the offence was committed under circumstances of great aggravation. The case would not then stand as it did when the Magistrate passed sentence, and it is no hardship upon a prisoner who appeals, and insists upon having his witnesses examined, that he should be liable to have his punishment enhanced, if those witnesses prove circumstances which aggravate his offence.

"It is not very clear whether an appeal lies from the Sessions Judge to the High Court, in a case in which acting, as an Appellate Court, he orders additional evidence to be taken under S. 422, and enhances the punishment awarded by a Magistrate. But we think that such a case falls substantially within the provisions of S. 408, and must be considered as a conviction or a trial held by a Court of Session, and consequently that an appeal lies to this Court.

"In the present case, we think that the Judge very properly called for additional evidence, as there was none before the Magistrate sufficiently to show that the prisoner was guilty.

"The Judge, in our opinion, was justified in point of law in passing this sentence, which he did notwithstanding the punishment was thereby enhanced."

See also case of Mohesh Chatterjee and others (2 W. R., 13), in which the High Court held that there was an appeal against the order of the Sessions Judge in a case in which he directed the Magistrate to take the evidence for the defence, and then proceeded to pass a fresh sentence.

Finding of dishonest misappropriation not reversible on the ground of the offence proved being theft.

423. No finding by a Court of the offence of dishonest misappropriation of property under Section 403 of the Indian Penal Code, or of dishonest

misappropriation of property possessed by a deceased person at the time of his death under Section 404 of the said Code, or of criminal breach of trust under Section 405 of the said Code, or of criminal breach of trust by a carrier, wharfinger, or warehouse-keeper under Section 407 of the said Code, or of criminal breach of trust as a clerk or servant under Section 408 of the said Code, shall be liable to be reversed or altered by any Court, whether on appeal or revision, on the ground that the offence proved by the evidence was the offence of theft under Section 378 of the said Code, or the offence of theft in a building, tent, or vessel under Section 380 of the said Code, or the offence of theft as a clerk or servant of property in the possession of his master under Section 381 of the said Code.

See Ss. 56, 57.

Finding of theft not reversible on the ground of the offence proved being dishonest misappropriation.

424. No finding by a Court of the offence of theft under the said Section 378 of the Indian Penal Code, or of theft in a building, tent, or vessel under the said Section 380, or of theft as a clerk or servant of property in the possession of his master under the said Section 381, shall be liable to be reversed or altered by any Court, whether on appeal or revision, on the ground that the offence proved by the evidence was the offence of dishonest misappropriation of property under the said Section 403, or the offence of dishonest misappropriation of property possessed by a deceased person at the time of his death under the said Section 404, or the offence of such dishonest misappropriation under the said Section, the offender being at the time of the person's decease employed by him as a clerk or servant, or the offence of criminal breach of trust under the said Section 405, or the offence of criminal breach of trust as a carrier, wharfinger, or warehouse-keeper under the said Section 407, or the offence of criminal breach of trust as a clerk or servant under the said Section 408.

See. Ss. 58, 59.

Saving of power of Appellate Court to reduce punishment awarded under last two Sections.

425. Provided that nothing in the last two Sections shall preclude the Appellate Court in any case mentioned therein from reducing the

punishment awarded by a Lower Court in such case, within the limits prescribed for the offence which such Appellate Court shall consider to have been proved by the evidence against the accused person.

Finding or sentence not ordinarily reversible by reason of error or defect in the charge or the proceedings.

426. No finding or sentence passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error or defect either in the charge or in the proceedings on trial, unless the accused person shall have been sentenced to a larger amount of punishment than could be awarded for the offence of which, in the judgment of the Appellate Court, the accused person ought upon the evidence to have been found guilty, or unless, in the judgment of the Appellate Court, the accused person shall have been prejudiced by such error or defect ; and

Appellate Court may reduce punishment.

in case the accused person shall have been sentenced to a larger amount of punishment than could have been awarded for the offence which, in the judgment of the Appellate Court, is proved by the evidence, the Appellate Court may reduce the punishment within the limits prescribed by the Indian Penal Code or any law for the time being in force for such offence.

The Calcutta High Court [707, 1864] has declared that S. 426 generally in effect enables an Appellate Court to find a prisoner guilty of an offence with which he had not been specifically charged, if the evidence is sufficient to sustain the finding, care being taken that the punishment is reduced to that which the offender should have received for the offence which he actually has committed, and that the accused has not been prejudiced by any error or defect either on the charge or on the proceedings of the Court below.

The prisoner having been committed to the Court of Session on a charge of criminal breach of trust [S. 406, Penal Code], the Sessions Judge, acting under S. 244, Criminal Procedure, amended the charge by adding a head, charging him under S. 418, Penal Code, with cheating. Although he was acquitted of criminal breach of trust, and erroneously convicted of cheating, of which the facts did not show him to be guilty, the Calcutta High Court refused to interfere, holding that he was clearly guilty of criminal breach of trust, and the sentence passed was not severe.—Alum Sheikh, November 25th, 1862.

The Calcutta High Court declined to interfere in a case of theft in which the proceedings had been held by a Magistrate whose property had been stolen, holding that the appellant had had a fair trial before the Court of Session, and the irregular proceedings of the Magistrate were not sufficient to vitiate the trial.—Boidnath Singh and others, 3 W. R., 29; also 3 Agra, 93. If on an appeal against a conviction of theft, it be found that the evidence, though not sufficient to establish that offence, is legally sufficient for a conviction of abetment of theft, the order of the Lower Court should not be

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reversed, but its finding should be altered so as to agree with the evidence.—3 W. R., 9 C. L.

The Judicial Commissioner, Punjab, has held that the competency of an Appellate Court to maintain the sentence of a Lower Court, while altering its finding, depends on the determination of the question, whether the accused has been prejudiced by the error in the charge or not.

Certain persons were convicted under S. 373 (buying a minor for purposes of prostitution), but on appeal were convicted of cheating, the sentences being reduced to make them legal.—Debee Singh, 7 W. R., *55*. So also, where certain prisoners had been convicted as abettors instead of principals, the High Court refused to interfere, holding that this was a mere technical error by which the prisoners had in no way been prejudiced.—Tarinee Churn Chattopadhya and others, 7 W. R., 3. Similarly, where the conviction has been for cheating (S. 417, Penal Code), instead of under S. 177 (giving false information), the Bombay High Court would not interfere.—Raghoji bin Kanaji, 3 Bombay, 42. *Crown cases.* But in a case in which the Magistrate, under S. 188, Penal Code, passed a sentence of *rigorous* imprisonment, and in his finding failed to show that the case fell within the latter part of that Section, which would alone empower him to pass such a sentence, it was held to be illegal, and was altered to simple imprisonment.—Ratanrao bin Mahadeorao Chavan, 3 Bombay, 32. *Crown cases.* It does not appear from the report of this case what facts were proved in evidence, and what offence they would constitute, or whether it was merely on account of the omission in the finding that the sentence was pronounced to be illegal.

On the appeal of certain persons convicted of extortion (S. 383, Penal Code), the High Court found that they were not guilty of robbery, but declined to interfere.—Duleelooddeen and another, *5* W. R., 19. So also, when it was held that the appellant should have been convicted under S. 498 of enticing a married woman, &c., instead of under S. 366 of kidnapping to compel marriage, &c.—Sremotee Podee, 1 W. R., *45*. The fact that an offence is also punishable under another law is no reason for annulling a conviction under the Penal Code.—Kasimooddeen, Constable, 8 W. R., *55*. Similarly, where a conviction had been erroneously made under a special law not applicable to the case, but the offence was otherwise punishable, the High Court would not interfere, holding that the prisoners had not been prejudiced by the Magistrate having referred to the wrong law.—4 W. R., *5* C. L.

The appellants having been convicted of grievous hurt, rioting, and abetment of those offences, and sentenced separately for each offence, the High Court held that the sentences for abetment were irregular, and should not have been awarded: but as the more serious offence of culpable homicide appeared to have been established, and the conviction and the sentences in the aggregate were not illegal for grievous hurt, the Court would not interfere.—Ramnarain and others, 4 W. R., 37. Similarly, where separate sentences had been given on a conviction under S. 211 (having made a false charge with intent to injure, &c.), and under S. 193 (having intentionally given false evidence), the offences having been committed simultaneously and by the same act.—4 W. R., 4 C. L.; see also 6 W. R., 2 C. L.

Conversely, where, instead of separate sentences for each offence in accordance with S. 46, a consolidated sentence had been passed, the Bombay High Court held that this was irregular, but that under S. 426 it was not competent to interfere.—Vinayak Trimback, 2 Bombay, 414.

The appellant having been convicted of abetment of grievous hurt, and the charge having been for grievous hurt only, the Agra Sudder Court refused to interfere, holding that the error or defect in the proceeding had not prejudiced him.—2 Agra, 278.

In another case, the same Court upheld the sentence of the Lower Court, although the offence charged, abetment of kidnapping [Ss. 116, 363, Penal Code], was not proved, but the sentence was not excessive for wrongful concealment of a kidnapped person [S. 368], of which the evidence

showed that he was guilty.—2 Agra, 369. In another case, the Court refused to interfere, although from the evidence the appellant should have been convicted of attempt to commit murder [S. 307, Penal Code] rather than of abetment of murder [Ss. 109, 302].—2 Agra, 313.

"The improper reception or rejection of evidence shall not be ground of itself for a new trial, or a reversal of any decision in any case, if it shall appear to the Court, upon which such objection is raised, that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that if the rejected evidence had been received, it ought not to have varied the decision."—Act II., 1855, S. 57.

As to whether the improper reception of evidence of the previous conviction of the prisoner in a case tried in a Sessions Court with the aid of Assessors is sufficient ground for reversal of the conviction, and an order for a new trial has been the subject of conflicting decisions of the Calcutta High Court, see cases of Gopal Thakoor, 6 W. R., 72; Thakoor Doss Chootur, 7 W. R, 7; Behary Dosadh, *Ibid;* and Phoolchand, 8 W. R, 111., and the case of Kalu Mal, 7 W. R., 103.

The omission of a Magistrate, after having taken down evidence to read it over and explain it to each witness, and to subscribe a certificate under S. 199, was held to vitiate the evidence, and to have prejudiced the accused. The proceedings were quashed, and fresh trial ordered.—Issur Raout, 8 W. R., 64.

Court of appeal how to proceed in case of conviction by a Court not having jurisdiction.

427. When a Court subordinate to a Court of Session* shall have convicted a person of an offence not triable by such Court, it shall be competent to the Appellate Court to annul the conviction and sentence of such Court, and to direct the trial of the case by a Court of competent jurisdiction.

* S. 13.

Thus where a person who had been convicted under S. 181, Penal Code, appealed to the Sessions Judge, and that officer was of opinion that the offence was rather under S. 193, over which the Magistrate had no jurisdiction, the Calcutta High Court held that the Sessions Judge should under S. 427, Code of Criminal Procedure, have annulled the conviction and ordered the Magistrate to commit the prisoner for trial.—*In re* Heraman Singh, 8 W.R., 30.

An Appellate Court other than a High Court is not empowered by S. 427 to interfere with an order passed by a subordinate Court, *except on appeal.* If no appeal has been preferred, and the sentence or order appears to be contrary to law, the case should be referred to the High Court under S. 404.—Calcutta High Court, 875, 1865; see also case of Atmaram Waman Bhandakar, 3 Bombay, 8. *Crown cases.*

Even when an appeal has been preferred, a Sessions Judge cannot annul a conviction of an offence within the Magistrate's jurisdiction, because he considers that the evidence discloses the commission of a more serious offence over which the Magistrate has no jurisdiction. It is only when a Court subordinate to a Court of Session shall have convicted persons of an offence not triable by such Court, that it is competent to the Appellate Court to annul the conviction and sentence.—*Id.* Ichaibur Dobey, 4 W. R., 11; Ramtuhal Singh, 5 W. R., 12; Pakhee Singh, 6 W. R., 70.

Finality of order on appeal.

428. Except as provided in Section 405 of this Act, sentences and orders passed by an Appellate Court upon appeal shall be final.

Because his order is not appealable, a Magistrate cannot refuse to allow a convict in Jail to execute a vakalutnamah.—Vaiyapuri Gaundan, 1 Madras, 4.

CHAPTER XXXI.—Ss. 429—445.

General Rules.

In what language sentence to be written.

429. Every sentence or final order of a Criminal Court,* together with the reasons for making or passing the same, shall be written in the vernacular language of the presiding Officer, and shall be dated and signed by such Officer at the time of his making or passing the same, and the original shall be filed with the record or proceedings, and a translation thereof, where the original is recorded in a different language from that in ordinary use in proceedings before such Officer, shall be incorporated in the record of the sentence or order.

* S. 11.

A translation of all final orders and sentences must be incorporated with the record, notwithstanding that, under orders of the Local Government under S. 196, the evidence may have been recorded in English.—1 W. R., 5 C. L.

A judgment should contain a short statement of the facts of the case, and a summing up of the points on which the finding is based.—3 W. R., 13 C. L; Nowab Khan, 7 W. R., 25.

A Sessions Judge, in his judgment (that is, in his reasons for making or passing his sentence or final order,) is bound to state the evidence upon which he convicts the persons under trial before him.—Kodai Kahar, 5 W. R., 6; Ishur Manjee, *Ibid* 17.

It is unnecessary for an Appellate Court, confirming the order of a Lower Court, to enter into prolix detail, if it be satisfied by a perusal of the record that the proceedings below and the conviction are correct.—Hurrihur Churn Singh, Suth. Rep, 1864, p. 6.

When it may be written in English.

430. If the vernacular language of the presiding Officer be not English, and the Officer be sufficiently conversant with the English language to be able to write the sentence or final order in a clear and intelligible manner in that language, and prefer to write the same in that language, the sentence or final order may be written in English.

Employment of interpreter.

431. When the services of an interpreter are required by any Criminal Court† for the interpretation of any evidence or statement, such interpreter shall be sworn in the manner provided for witnesses by any law for the time being in force, to interpret truly such evidence or statement, and such interpreter shall be bound to state the truth in his interpretation of such evidence or statement.

† S. 11.

See S. 43 and note.

Right of accused to be defended by Counsel

432. Every person charged before any Criminal Court* with an offence may of right be defended by Counsel or authorized agent.

* S. 11.

This has been modified by Act XX. of 1865, S. 40, which requires "the permission of the presiding Judge or Magistrate" if the agent be not a Pleader or Mookhtar duly qualified under that Act. It further declares that "no person so appearing, pleading, acting or assisting shall be entitled to receive any fee or reward therefor."

Confinement of youthful offenders in reformatories.

433. When any person under the age of sixteen years shall be sentenced by any Magistrate or Court of Session† to imprisonment for any offence, it shall be lawful for such Magistrate or Court to direct that such offender, instead of being imprisoned in the Criminal Jail, shall be confined in any reformatory which may be recognised by the Local Government as a fit place for confinement, in which there may be means of suitable discipline and of training in some branch of useful industry, and which shall be kept by a person willing to obey such rules as the Government may direct with regard to the discipline and training of persons confined therein. All persons confined under this Section shall be subject to the rules so laid down by Government.

† S. 13.

Act VI. of 1864, S. 8, declares that "any juvenile offender who commits any offence which is not by the Indian Penal Code punishable with death, may, whether for a first or other offence, be punished with whipping in lieu of any other punishment to which he may for such offence be liable under the said Code." Reading Act VI. of 1864, S. 5, with S. 433, Criminal Procedure, the Agra Sudder Court [39, January 19th, 1865] has held that any person under the age of sixteen years is a juvenile offender within the terms of the former law.

Powers of Court of Session and Magistrate to regulate the proceedings of subordinate Courts.

434. It shall be at all times lawful for a Court of Session‡ and for a Magistrate to call for and examine the record of any Court immediately subordinate to such Court or Magistrate, for the purpose of satisfying themselves as to the legality of any sentence or order passed, and as to the regularity of the proceedings of such subordinate Court. If the Court of Session‡ or Magistrate shall be of opinion that the sentence or order is contrary to law, the Court or Magistrate shall refer the proceedings for the orders of the Sudder Court.§ It shall not be lawful for any other Court than the Sudder Court§ to alter any sentence or order of any subordinate

‡ S. 13.

§ S. 19.

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Court, except upon appeal by parties concerned, duly made according to the provisions of Chapter XXX. of this Act.

The Calcutta High Court (Cir. 2, 1867) has declared that it does not interpret the words "*immediately* subordinate" in S. 434 as having any reference to the *judicial* powers vested either in the Courts described as subordinate, or in the Court to which they are described as subordinate. All Magisterial Officers in a District, except the Magistrate of the District, are, within the meaning of this Section, *immediately* subordinate to the Magistrate of the District, whatever their judicial powers may be. The Magistrate of the District has, therefore, power to call for and examine the record of any Magistrate within his District, for the purpose of satisfying himself as to the legality of any sentence or order passed, and as to the regularity of the proceedings of such Magistrate. He is not, however, competent to comment upon the proceedings of an Officer exercising the full powers of a Magistrate, or to point out what he considers to be errors of law or irregularities. If he is of opinion that the sentence or order is contrary to law, he should forward the case through the Sessions Judge for the orders of the High Court.

A Magistrate is bound to comply with the requisition of the superior Court calling for his proceedings, and while the legality of the order is under consideration, he is not warranted in convicting and sentencing, under S. 188, Penal Code, a person charged with disobedience thereof.—Dulsukram Haribhai, 2 Bombay, 407.

A superior Court is bound to refer to the High Court any case in which an illegal order or sentence may have been passed as soon as it is brought to notice. The term for appeals (S. 415) is not applicable to such references.—3 W. R., 6 C. L.

A Sessions Judge should not refer to the High Court a case pending before him on appeal, since he is competent to dispose of such case both on the law and on the facts.—Sree Kissen, 9 W. R., 5.

The inexpediency of a commitment forms no valid ground for the action of the Sudder Court in cancelling a commitment regularly made to a Court of Session. It can be cancelled only on grounds of irregularity of proceedings or illegality of sentence or order.—Agra Sudder Court, September 26th, 1863.

The Magistrate of the District cannot call for the record of a case decided by a Magistrate exercising the full powers of a Magistrate, and record his opinion on his proceedings, since such a Magistrate is in no way judicially subordinate to the Magistrate of the District.—Calcutta High Court, 504, 1864. Unless a Sessions Court intends to refer a case to the High Court, it should not give its opinion on the evidence.—Pal Charrier, 5 W. R., 2.

The following orders have been issued by the Calcutta High Court (Cir. 18, 1863) for the manner in which references under S. 434 shall be made:—

"References under S. 434 shall always be accompanied by the records of the case to which they relate, and by an English letter commencing 'Under S. 434, Act XXV. of 1861, and Circular Order of the High Court, dated 15th July 1863, No. 18, I herewith transmit the record of the case noted in the margin, to be laid before the High Court with the following report.' There will then be stated:—

1*st*.—A brief analysis of the case.

2*nd*.—The order of the Lower Court.

3*rd*.—In what particular portion of that order the Court making the reference considers an error on a point of law to exist.

4*th*.—The grounds upon which the order of the Lower Court should be reversed.

"Unless there be any particular reason why delay should be avoided, the explanation of the Lower Court should be called for and accompany the reference.

"The Court do not think it necessary to enter into any details of the particular occasions on which such references should be made to them, or to define what descriptions of grave irregularity of procedure, undue severity of punishment, &c., may give rise to a reference to them.

"It is deemed sufficient to enjoin the exercise of a sound discretion in making these references to the Court, so that neither important errors and omissions may escape correction, nor the time of the Court be needlessly engrossed by matters not demanding their interference."

When Court of Session may order commitment of party discharged by Magistrate.

435. In the case of offences not triable by the Magistrate, the Court of Session* may order the commitment to the Court of Session* of any accused person who may have been discharged by the Magistrate. In the case of such offences the Court of Session may order an enquiry into any complaint which the Magistrate may have dismissed without enquiry.

* S. 13.

The proceedings of the Magistrate referred to in this Section would have been under S. 225, or under S. 67 or S. 180. When a Magistrate finds that there are not sufficient grounds for committing the accused person to take his trial before the Court of Session, or for remanding him, he shall discharge him.—S. 225. If the offence be one not triable by the Magistrate, the Court of Session may order the commitment of the accused person who has been so discharged.—See case of Hurree Chunder Nundee, 7 W. R., 38. The offence of which the person has been accused must be one not triable by the Magistrate, *i. e.*, triable only by the Court of Session, and not one triable by the Magistrate *or* Court of Session.—3 W. R., 21 C. L.; Agra Sudder Court, November 5th, 1862.

Where any complaint of such an offence may have been dismissed without enquiry, the Court of Session may order an enquiry.

Under S. 180, if the Magistrate, before whom a complaint is made, that any person has committed an offence triable conclusively by the Court of Session, see cause to distrust the truth of the complaint, he may postpone the issuing of process for the attendance of the person complained against, and direct a previous enquiry to be made into the truth of the complaint for the purpose of ascertaining the truth or falsehood of the complaint. It is further declared that nothing contained in this Section shall prevent the Magistrate from at once dismissing the complaint, if in his judgment there be no sufficient ground for proceeding with it.—See also S. 67, which authorises a Magistrate to dismiss a complaint on such grounds.

The terms "without enquiry" have been interpreted to mean *without proper enquiry*, that is when a Sessions Judge sees that there are, *primâ facie*, good grounds for supposing that a charge of an offence triable exclusively by a Court of Session is well founded, and that a Magistrate has dismissed it without enquiry, *i. e.*, without proper enquiry.—3 W. R., 22 C. L.

The powers of a Sessions Judge under S. 435 have been restricted by the Agra Sudder Court and the Calcutta High Court. The former (5 Agra, 181) has held that a Sessions Judge could not act in a case of dacoity dismissed by a Magistrate after enquiry and report by a Police Officer under S. 180; and the Calcutta High Court (432, 1863) has declared that a Sessions Judge is not competent to order a Magistrate to proceed by issuing a summons or warrant, or to hold further enquiry into a case dismissed by him under S. 67 before the issue of a summons, but that if any such case exhibits ignorance or negligence on the part of a Magistrate, it should be reported to the High Court. A compliance with the orders of these Courts would seem to nullify the latter part of S. 435, since an order by a Magistrate, dismissing a complaint triable by a Court of Session, can be passed only under S. 67 or S. 180.

On completing an enquiry ordered by the Sessions Judge under S. 435, the Magistrate should follow one or other of the courses prescribed by Ss. 225, 226 of the Code, that is, he should either discharge or commit the accused person. He is not bound to report the result of his enquiry to the Sessions

CH. XXXI. Ss. 436—439.

Judge: but that officer can call for the record, and, if necessary, can direct the Magistrate to commit.—Calcutta High Court, 432, 1863.

Where a Magistrate has convicted a person of an offence within his jurisdiction, the Sessions Judge cannot, either under S. 427 or S. 435, direct him to make a commitment to the Sessions Court.—Pakhee Singh, 6 W. R., 70.

The Calcutta High Court has declared that it could not interfere in a case in which the Sessions Judge had refused to order the commitment of a person discharged by the Magistrate (Seetaram Chowdry, 2 W. R., 44); also that S. 435 did not apply to the case of a European British subject discharged by a Justice of the Peace.—*In re* Brae, 3 W. R., 64.

It is doubtful whether a Sessions Judge could order a Magistrate to hold a preliminary enquiry into the case of a person who would appear from the evidence on the trial of others to be concerned in the commission of an offence, but who had not been complained against or brought before the Magistrate. The point seems to have been noticed by the Calcutta High Court in the case of Hurree Chunder Nundee (7 W. R., 38), but no opinion was expressed.

* S. 13.

436. The Court of Session* may direct that any accused person shall be admitted to bail, or that the bail required by a Magistrate be reduced.

Power of Court of Session to direct bail.

The provisions of this Section seem to apply only to offences within the jurisdiction of a Court of Session as a Court of Original Jurisdiction, since the powers of that Court, as a Court of Appeal, are restricted by S. 421, which allows the suspension of sentences passed for non-bailable offences, and the release on bail only when the conviction has been for an offence which is bailable.

† S. 11.

437. When any person is required by any Criminal Court† to give bail, it shall be lawful to such Court to permit such person to deposit a sum of money or Government promissory notes to such amount as such Court may fix in lieu of such bail.

Deposit may be made instead of bail.

‡ S. 13.

438. It shall be lawful for the Court of Session,‡ in any case in which it shall appear proper, to order payment by or on the part of Government of the reasonable expenses of any complainant or witnesses attending for the purpose of any trial before such Court under this Act.

Expenses of prosecutors and witnesses.

The provisions of this Section do not apply to proceedings before a Magistrate.—Calcutta Sudder Court, 105, 1862.

In the Presidency of Bombay a witness who may be obliged to leave his home, is entitled to an allowance for subsistence, while so detained, not exceeding a quarter of a Rupee per day, which shall be paid by the Collector to the order of the Court.—Reg. (Bombay) XIII., 1827, S. 34, cl. 9. The law for Bengal, Act VII., 1846, has been repealed, and witnesses within that Presidency can be allowed diet-money only under S. 438 when appearing before a Sessions Court.

§ S. 11.

439. No trial held in any Criminal Court§ shall be set aside, and no judgment passed by any Criminal Court§ shall be reversed either on appeal or otherwise for any irregularity

No trial, &c., to be set aside for irregularity of procedure.

in the proceedings of the trial, unless such irregularity have occasioned a failure of justice.

See S. 426 and the cases quoted in the note.

Copy of sentences or order to be furnished on application.

440. A copy of the final sentence or order passed by any Criminal Court* shall be furnished without delay on the application of any party to the case in which such sentence or order was passed. Such copy shall be made at the expense of the party applying for it, unless such party is in confinement under the sentence or order, and is desirous of appealing against the same, or unless the Court shall for any special reason see fit to grant such copy free of expense.

* S. 11.

The Government of Inida in Council (Notification 183, dated 8th January 1863, *Calcutta Gazette*, p. 43,) has issued an order under Act X. of 1862, S. 33, exempting from Stamp-Duty copies of final sentences or orders passed by Criminal Courts, which parties desirous of appealing from such sentences or orders are required by S. 416, Code of Criminal Procedure, to file with their petition of appeal, provided that the party desirous of appealing is in confinement under the operation of the sentence or order at the time that he applies for a copy of the same.

See also Act XXVI., 1867, S. 6, Art. 10, and its exceptions.

It is incumbent on every officer to give copies of his Judicial Orders to any applicant. When parties are not in Jail, or when they produce stamped paper, copies should be given on such stamped paper: and where persons are in confinement, copies may be furnished on unstamped paper. This rule applies to all sentences, whether appealable or not. The words "desirous of appealing" should not be confined to cases where by the letter of the law there may be a right of appeal.—Calcutta High Court, 454, 1863. Such copies must be granted, whether the sentence or order is appealable or not.—Agra Sudder Court, November 4th, 1863. On application made by the Magistrate of the District to the Sessions Judge for a copy of any judgment delivered by him, the Judge should permit a copy to be made by any person whom the Magistrate may depute for that purpose. Such copies will be granted to Magistrates and Committing Officers only for their information and guidance; they are not at liberty to cavil at the judgment of the Sessions Court, or enter into any discussion with the Judge upon its merits.—Calcutta High Court, Cir. 1, 1864. When the Judge's notes form the only record of a case, the parties should be allowed to have copies of such notes on paying the authorised charge for making the same.—Subbayya Gaunaan, 1 Madras, 138.

The Calcutta High Court, as a matter of convenience, has extended the terms of S. 440 to furnishing parties, on their application, with copies of the reasons recorded by Criminal Courts under S. 429 for passing a sentence or final order in a case.—5. W. R., 8 C. L.

Act not to take effect in Presidency Towns or Straits Settlement.

441. Nothing in this Act shall be held to alter or effect the jurisdiction or procedure of the Chief Commissioner of Police, the Police Magistrates, or the Police of the Towns of Calcutta, Madras, and Bombay, and the Settlement of Prince of Wales' Island, Singapore, and Malacca, except so far as this Act expressly provides for the same.

CH. XXXI. Ss. 442 & 443.

Saving of jurisdiction and procedure of Heads of Villages, Village Police Officers, &c.

442. Nothing in this Act shall be held to alter or affect the jurisdiction, duties, or procedure of land-holders specially empowered according to law in the Presidency of Bombay, nor to alter or affect the jurisdiction or procedure of the Heads of Villages in the Presidency of Fort Saint George, nor to alter or affect the jurisdiction, duties, or procedure of Village Police Officers in the Presidency of Bombay, nor to alter or affect the jurisdiction or procedure of any Officer duly authorised and appointed under the laws in force in the Presidencies of Fort Saint George and Bombay respectively, for the trial of petty offences in Military Bazaars at Cantonments and Stations occupied by the troops of those Presidencies respectively.

Of Officers exercising jurisdiction over petty offences in Military Cantonments.

* S. 19.

Sudder Court to make general rules for regulating proceedings, &c.

† S. 11

443. The Sudder Court* shall have power to make and issue general rules for regulating the practice and proceedings of that Court and of all Criminal Courts† subordinate to it, and also to frame forms (when not prescribed by this Act) for every proceeding in the said Courts for which it shall think necessary that a form should be provided, for keeping all books, entries, and accounts to be kept in such Courts, and for the preparation and transmission of any calendars or statements to be prepared and submitted by such Courts, and from time to time to alter any such rule or form, provided that such rules and forms be not inconsistent with the provisions of this Act or of any other law in force. Any rules framed by the Court under this Section shall be published in the *Official Gazette*.

The following are the most important general orders of the Calcutta High Court which have not been quoted in the foregoing :—

CIRCULAR No. 14, 1867.

The Form herewith enclosed is to be substituted for that hitherto used for the Annual Register of Fines No. 7, in Judges and Magistrates' Returns.

The Court think it unnecessary to require the detailed Statement of Fines heretofore submitted. The Register, however, should be kept up in the Vernacular, both in the Judges and Magistrates' Office ; and the Sessions Judges, in submitting the Annual Returns, should state that they have examined the Registers in their own and in the offices of the Magistrate and his subordinates, and certify to their being properly kept up An explanation will be called for when the outstandings of any year are excessive.

No. 7.

Annual Return of Fines for the District of

Amount unrealized from former years.	Amount of fines imposed during the year 186 .	Total.	Amount awarded as compensation under Sec. 44, C. C. P.	Amount realized on account of former years.	Amount realized on account of the year.	Total realized.	Amount paid as compensation under Sec. 44, C. C. P.	Amount credited to Government.
Amount unrealized of fines imposed in ...	...		1867					
Ditto ditto ditto	...		1866					
Ditto ditto ditto	...		1865					
Ditto ditto ditto	...		1864					
Ditto ditto ditto	...		1863					
Ditto ditto ditto	...		1862					
Total, unrealized	...		.....					

CIRCULAR No. 17, 1863.

The High Court of Judicature are pleased to direct that every Judge of every Court, including all Magisterial Officers, whose duty it is to administer the law as contained in the Indian Penal Code and the Code of Criminal Procedure, shall from time to time report to his official superior, any doubt which he shall entertain as to the construction which he shall put upon any part of those Codes in the course of cases which shall come before him.

2. These reports must not be made on mere speculative questions or pending trial or enquiry, but after the cases shall have been actually tried, or, in cases of preliminary enquiry, after the enquiry has been concluded. If the report be made by the Magistrate of the District, it shall be transmitted by him to the Judge. If it be made by any of the Magisterial Authorities subordinate to the Magistrate of the District, it shall be transmitted by him to the Judge with such remarks as he may think fit to make thereon. All reports, which shall be submitted to the Judge, unless in the case of reports made by officers subordinate to the Magistrate of the District in which he shall consider the doubt to be obviously unreasonable, shall be transmitted to this Court, with such remarks as he may deem necessary, and also with such portions (if any) of the correspondence which shall have taken place on the subject as he shall consider important to be considered by this Court. The Judge shall also forward the record of the case if he consider it necessary.

3. In order to make as complete as possible any suggestions for the alteration of, or amendment of, the law which the Court may see fit hereafter to make to the Legislature, they are pleased to direct that a similar report shall be made, and forwarded in like manner to this Court,

CH. XXXI. S. 443.

regarding any point upon which doubts have heretofore been entertained by the Criminal Authorities in the course of any trial or preliminary enquiry since the Penal Code became law, although prior to the promulgation of this Circular.

4. The Court are further pleased to direct that all references made under this Circular shall be in the Forms annexed :—

Penal Code.

1	2	3	4	5	6	7	8
Section of Penal Code about which doubt is entertained.	Name of District and Officer's name and rank by whom reference is made, and No. of case on his file.	Abstract of doubtful point.	Opinion of Officer making reference.	Remarks (if any) by the Magistrate of the District, if transmitted through him.	Remarks (if any) by Sessions Judge.	Remarks by the Judges of the High Court.	Names of Judges of the High Court.

Criminal Procedure Code.

Section of Criminal Procedure Code about which doubt is entertained.	Name of District and name and rank of Officer making the reference, and No. of case on his file.	Abstract of doubtful point.	Opinion of Officer making the reference.	Remarks (if any) by the Magistrate of District if transmitted through him.	Remarks (if any) by Sessions Judge.	Remarks by the Judges of the High Court.	Names of Judges of the High Court.

CIRCULAR No. 5, 1865, *(adopted by the Agra Court, Cir.* 17, 1865*)*.

For the purpose of enabling Magistrates to ascertain whether parties charged before them with heinous offences have been previously convicted of any of the offences for which enhancement of punishment is provided, on a second or subsequent conviction, by S. 75, Act XLV. of 1860, and S. 4, Act VI. of 1864, and for purposes of general statistical information, the High Court are pleased to direct that Registers be opened in Magistrates' Offices, in the form appended to this Circular. These Registers should contain the names of parties convicted of any of the crimes specified on the margin, and should be in the Bengali or Urdu language and character, varying according to the vernacular of the District.

1. Offences relating to coin and Government Stamps (Chapter XII., P. C.)
2. Offences against property (Chapter XVII., P. C.)
3. Giving or fabricating false evidence (Ss. 193 to 195, P. C.)
4. Falsely charging any person with having committed an unnatural offence (Ss. 211 and 377, P. C.)
5. Assaulting or using Criminal force to any woman with intent to outrage her modesty (S. 354, P. C.)
6. Rape (S. 375, P. C.)
7. Unnatural offences (S. 377, P. C.)
8. Forgery (Ss. 465, 466, 467, 468, 469, P. C.)

Culpable homicide (S. 304).

Causing grievous hurt (Ss. 323 to 326, and Ss. 329, 331, 333, 335, 338).

2. Every conviction, as sentence is passed, must be entered in the Office of the Magistrate of the District by the Officer whose duty it is to keep the Register of Convictions. In cases committed to the Sessions, the entry will be made on sentence being passed by the Sessions Judge. If a prisoner be released on appeal, whether by the Judge or by the Magistrate, a note should be made in the column of remarks of the date and purport of the order of the Appellate Court.

3. Similar Registers should be kept up in the same manner by Sub-Divisional Officers regarding the offences specified which may have been committed within their respective jurisdictions, and for which any persons may have been convicted. These Officers should report to the Magistrates the entries of the past month regularly at the commencement of each successive month for incorporation in the general District Register.

4. To ensure the proper preparation and keeping up of the Register, the Magistrate or other Magisterial authority in charge shall require the Officer whose duty it is to prepare it to bring the Register for his inspection and signatue at least once every week.

5. At the close of the year, an Alphabetical Register of the parties convicted within the 12 months should be made for facility of reference, and at the close of every fifth year, an Alphabetical Register should be prepared from the Alphabetical Registers of the previous five years.

6. When a prisoner has been convicted more than once, a note to that effect should be made against his name in the Register opened for that purpose.

7. For the purpose of giving the foregoing Rules retrospective effect, an Alphabetical Register should be at once prepared in the form prescribed in this Circular Order of parties convicted since the date on which the Penal Code came into force, *i. e.*, from the 1st January 1862, to the end of 1864 the requisite information being derived from the Register of Convictions in the charge of the Record-keeper and of the Jailor.

Name of the prisoner (including his *alias* if any).	Name of his father.	Residence.	Profession or trade.	Caste.	Age or supposed age.	Height.	Personal marks, such as squint, lameness, loss of limb, permanent scars, &c.	Of what offence convicted.	Date of conviction.	Sentence passed.	Previous conviction.	Remarks.

CIRCULAR No. 6, 1865.

The Court having reason to believe that the terms of the late Sudder Court's Circular No. 20, dated 20th August 1857, have in many cases been neglected, are pleased to call the attention of all Sessions Judges and Magistrates of Districts thereto, with the view to enforcing for the future a more general observance of its requirements.

2. The Circular is re-produced for easy reference.

3. If the Sessions Judges and Magistrates will from time to time visit their Record-Rooms (as they should), there will, the Court think, be no difficulty in obtaining a proper arrangement of all their records. The Court desire to impress seriously upon all Officers the extreme importance of this work, for without a proper arrangement of its records, and a periodical clearance of all old and useless papers, the efficiency of a public office is much impaired. On the other hand, a neglect of this duty in the course of time leads to such confusion as invariably results in an application for an extra Establishment to perform a duty which, if regularity had been enforced in the office, should have been executed without any difficulty by the Establishment attached to that office. The subject has recently been brought to notice by certain applications of this nature, which the Court have with considerable reluctance been compelled to submit to Government; but after this warning the Court wish to inform all Sessions Judges and Magistrates of Districts that they expect that the necessity for applications for extra Establishments will not arise, and that if any such applications are submitted, the Court will be compelled to hold the individual Officer personally responsible for an expense which must be held to have been caused solely by his carelessness and inattention to orders.

4. Mention of the state of their Record-Rooms should invariably be made in the Criminal Reports of Sessions Judges and Magistrates. The Court will not be satisfied with a mere cursory mention, but require a clear description of the state of each Record-Room, and the dates up to which the records have been sorted or destroyed, so that it may appear without doubt that this duty has in no way been neglected.

RULES.

I. Records of Sessions trials and heinous (*i. e.*, non-bailable) cases of Magistrates' Courts generally of above 14 years' date may unobjectionally be destroyed, a discretion being exercised at the same time by the Sessions Judges and Magistrates of preserving individual cases or papers on any grounds

appearing to them sufficient; cases in which the sentences have not expired must invariably be preserved.

II. Provided that cases in which parties accused have hitherto eluded apprehension, shall always be preserved.

III. The above Rules should be acted on from year to year, so that no accumulation may occur beyond a term of 14 years in regard of the records of heinous (*i. e.*, non-bailable) cases.

IV. In regard to the records of the Magistrate's Court, the following may be destroyed yearly, if upwards of two years old, excepting those which the Magistrate may deem it prudent to preserve in consequence of the non-arrest of particular offenders or non-realization of fines. In cases of the last description, the records should be destroyed, at all events, after six years from the date of sentence:—

Security cases, if expired.
Petty (*i. e.*, bailable) trials.
Act IV. of 1840 (re-enacted in Ch. XXII. Act XXV. of 1861) suits, excepting the decisions and documents, plaints and answers.
Miscellaneous cases.
Thannah Diaries.
Police Reports, in which no further proceedings followed.
Miscellaneous Ruboocarees.
Ditto Reports and Returns by the Nazir.
Copies of Perwannahs.
Ditto of Ishtahars.
Despatch Books.
Receipt Books of the Record-Room.
Rough Order Books.
Witnesses' Attendance Books.
Appeals.
Nazir's records, excepting lotbundees, accounts of money, and Ferry Ghât papers.
Miscellaneous Reports of the Jailor.
Miscellaneous Petitions.
Periodical Statement, except Register of petty (*i. e.*, bailable) cases.
Register of Mooktarnamahs excepting "general" ones.
Register of Miscellaneous cases.
Ditto Petitions

V. In regard to cases appealed to the Sessions Court, the Sessions Court record of such cases may be periodically destroyed after a term of six years. Thus, on the 1st January next, all appeal records of this nature may be destroyed appertaining to a date previous to 1st January 1853, (*i. e.*, at the present time, 1861).

Procedure of this Act to be followed in miscellaneous Criminal cases and proceedings.

444. The procedure prescribed by this Act shall be followed, so far as it can be, in all miscellaneous Criminal cases and proceedings which, after the passing of this Act, shall be instituted in any Court.

Commencement and operation of Act.

445. This Act shall come into operation in the Presidencies of Bengal, Madras, and Bombay on the 1st day of January 1862, but shall not take effect in any part of the territories in British India not subject to the General Regulations of Bengal, Madras, or Bombay, *until the same shall be extended thereto by the Governor-General of India in Council or by the Local Government to which such*

territory is subordinate, and until such extension shall have been notified in the Gazette.

APPENDIX OF FORMS.

A.

FORM OF SUMMONS *(Section 69).*

To A. B., of

Whereas your attendance is necessary to answer to a charge of *(state shortly the offence charged):* you are hereby required to appear in person or by authorized agent, (as the case may) be, before the [Magistrate] of on the day of Herein fail not.

(Signature and Seal)

Dated the day of

B.

FORM OF WARRANT *(Section 76).*

To *(name and designation of the person or persons who are to execute the warrant).*

Whereas of stands charged with the offence of *(state the offence):* You are hereby directed to apprehend the said and to produce him before me. Herein fail not.

(Signature and Seal).

This warrant may be endorsed as follows :—

If the said shall give bail, himself in the sum of with one surety in the sum of (or two sureties each in the sum of) to appear before me on the day of he may be released.

Dated *Signature.*

C

FORM OF WARRANT OF COMMITMENT.

(Section 222).

To Jailor of

Whereas of is charged with *(state the offence in respect af which the prisoner is charged, and the authority of the Committing Officer):*

You are hereby required to receive the said into your custody in the said Jail of , and him there safely to keep until he shall be thence delivered by due course of law.

Dated the day of

D.

FORM OF BOND TO KEEP THE PEACE.

(Section 284).

Whereas I inhabitant of have been called upon to enter into a bond to keep the peace for the term of , I hereby bind myself not to commit a breach of the peace or do any act that may probably occasion a breach of the peace during the said term ; and in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of Rupees.

Dated

FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF THE PRINCIPAL.

I hereby declare myself surety for the above said that he shall not commit a breach of the peace or do any act that may probably occasion a breach of the peace during the said term ; and in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the sum of Rupees.

Dated

E.

FORM OE RECOGNIZANCE TO PROSECUTE OR GIVE EVIDENCE.

(Sections 158 and 232).

I of do hereby bind myself to appear at in the Court of at o'clock on the day of next, and then and there to prosecute (or, as the case may be, to prosecute and give evidence or to give evidence) in the matter of a charge of against one A. B. ; and in case of my making default herein, I bind myself to forfeit to Her Majesty the sum of Rupees.

Recognizances to prosecute or give evidence and personal recognizances for appearance are exempted from Stamp Duty, and should be written on plain paper.—Act XXVI. 1867, Schedule B., Art. I.

F.

Form of Bond for good Behaviour.

(Section 300).

Whereas I inhabitant of have been called to enter into a bond to be of good behaviour to Her Majesty the Queen, and to all her subjects, for the term of , I hereby bind myself to be of good behaviour to Her Majesty and to all her subjects during the said term, and in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of Rupees.
Dated

Form of Security to be subjoined to the Bond of the Principal.

I hereby declare myself surety to the above said that he shall be of good behaviour to Her Majesty and to all her subjects during the said term; and in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the sum of Rupees.

SCHEDULE.

(Referred to in Section 22 and elsewhere in this Act).

Explanatory Notes—1st.—The entries in the 2nd and 6th Columns of this Schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code," are not intended as definitions of the Offences and Punishments described in the several corresponding Sections of the Indian Penal Code, or even as abstracts of those Sections, but merely as references to the subject of the Section, the number of which is given in the 1st Column.

2nd.—The term "Whether bailable or not," in Column 5, is to be taken in connection with the provisions of Sections 212 and 213 of this Code.

3rd.—Offences may be tried by a Court superior to the Court specifically mentioned in Column 7. For example, a Court of Session may try an offence entered in Column 7 as triable by a Magistrate.

This explanatory note is evidently subject to the provisions of S. 359 which declares that "except in the cases referred to in S. 172 of this Act, a Court of Session, as a Court of Original Criminal Jurisdiction, shall not take cognizance of any offence, but upon a charge preferred by a Magistrate or other officer specially empowered under this Act or under any other law to make commitments to such Court." S. 172 authorises a Court of Session to institute criminal proceedings, and try cases regarding certain offences (*e. g.*, contempts [Chapter X. Penal Code], offences against public justice, or offences relating to documents) exclusively within its jurisdiction, if they be committed before it or under its own cognizance.

4th.—Any offence which is triable by an Officer exercising the powers of a Magistrate, may be tried by a Subordinate Judge or a Principal Sudder Ameen in the Presidency of Fort St. George.

See S. 355.

5th.—The words "Magistrate of the District," as used in Column 7, shall include any Officer exercising the powers of a Magistrate.

6th.—The words "any Magistrate," as used in Column 7, shall include any Subordinate Magistrate of the 1st or 2nd class.

7th.—In the territories in British India to which the General Regulations of Bengal, Madras, and Bombay do not extend, the powers given by this Act shall be exercised by such Officers as the Local Government of those territories respectively shall appoint.

CHAPTER V.—OF ABETMENT.

1	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	The same punishment as for the offence abetted.	By the Court by which the offence abetted is triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
111	When one act is abetted and a different act is done, subject to the proviso.	Ditto.	Ditto.	Ditto.	The same punishment as for the offence intended to be abetted.	Ditto.
113	When an effect is caused by the act abetted different from that intended by the abettor.	Ditto.	Ditto.	Ditto.	The same punishment as for the offence committed.	Ditto.
114	If abettor is present when offence is committed.	Ditto.	Ditto.	Ditto.	The same punishment as for the offence abetted.	Ditto.
115	Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for 7 years and fine.	Ditto.

	If an act which causes harm be done in consequence of the abetment.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 14 years and fine.	Ditto.
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto.	Ditto.	According as the offence abetted is bailable or not.	Imprisonment extending to $\frac{1}{4}$ part of the longest term and of any description provided for the offence, or fine, or both.	Ditto.
	If the abettor or the person abetted be a public servant, whose duty it is to prevent the offence.	Ditto.	Ditto.	Ditto.	Imprisonment extending to $\frac{1}{2}$ of the longest term, and of any description provided for the offence, or fine, or both.	Ditto.
117	Abetting the commission of an offence by the public, or by more than ten persons.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for 7 years and fine.	Ditto.
	If the offence be not committed...	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.
119	A public servant concealing a design to commit an offence, which it is his duty to prevent, if the offence be committed.	Ditto.	Ditto.	According as the offence abetted is bailable or not.	Imprisonment extending to $\frac{1}{2}$ of the longest term and of any description provided for the offence, or fine, or both.	Ditto.
	If the offence be punishable with death or transportation.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for 10 years.	Ditto.

1.	2.	3.	4.	5.	6.	7.
Section.	Offences.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If the offence be not committed...	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	Imprisonment extending to ½ part of the longest term and of any description provided for the offence, or fine, or both.	By the Court by which the offence abetted is triable.
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto.	Ditto.	Ditto.	Imprisonment extending to ½ part of the longest term and of any description provided for the offence, or fine, or both.	Ditto.
	If not committed ...	Ditto.	Ditto.	Ditto.	Imprisonment extending to ⅛ part of the longest term and of the description provided for the offence, or fine, or both.	Ditto.

121	Waging or attempting to wage war, or abetting the waging of war against the Queen.	Shall not arrest without warrant.	Warrant.	Not bailable.	Death, or transportation for life, and forfeiture of property.	Court of Session.
122	Collecting arms, &c., with the intention of waging war against the Queen.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and forfeiture of property.	Ditto.
123	Concealing with intent to facilitate a design to wage war.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
124	Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
125	Waging war against any Asiatic power in alliance or at peace with the Queen, or abetting the waging of such war.	Ditto.	Ditto.	Ditto.	Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine.	Ditto.
126	Committing depredation on the territories of any power in alliance or at peace with the Queen.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years, and fine, and forfeiture of certain property.	Ditto.
127	Receiving property taken by war or depredation mentioned in Sections 125 and 126.	Ditto	Ditto.	Ditto.	Ditto.	Ditto.
128	Public servant voluntarily allowing Prisoner of State or War in his custody to escape.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.

CHAPTER VI.—OFFENCES AGAINST THE STATE—*(continued)*.

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
129	Public servant negligently suffering Prisoner of State or War in his custody to escape.	Shall not arrest without warwant.	Warrant.	Bailable.	Simple imprisonment for 3 years and fine.	Court of Session.
130	Aiding escape of, rescuing, or harbouring such prisoner, or offering any resistance to the re-capture of such prisoner.	Ditto.	Ditto.	Not bailable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.

131	Abetting mutiny, or attempting to seduce an Officer, Soldier, or Sailor from his allegiance or duty.	May arrest without warrant.	Warrant.	Not bailable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
132	Abetment of mutiny if mutiny is committed in consequence thereof.	Ditto.	Ditto.	Ditto.	Death or transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.

133	Abetment of an assault by an Officer, Soldier, or Sailor, on his superior Officer when in the execution of his office.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.
134	Abetmentof such assault, if the assault is committed.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
135	Abetment of the desertion of an Officer, Soldier, or Sailor.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District.
136	Harbouring an Officer, Soldier, or Sailor who has deserted.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
137	Deserter concealed on board merchant vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons.	Ditto.	Fine of Rs. 500.	Ditto.
138	Abetment of act of insubordination by an Officer, Soldier, or Sailor, if the offence be committed in consequence.	May arrest without warrant.	Warrant.	Ditto.	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
140	Wearing the dress, or carrying any token used by a Soldier, with intent that it may be believed that he is such a Soldier.	Ditto.	Summons.	Ditto.	Imprisonment of either description for 3 months, or fine of Rs. 500, or both	Any Magistrate.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
143	Being a member of an unlawful assembly	May arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
144	Joining an unlawful assembly armed with any deadly weapon	Ditto.	Warrant.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
147	Rioting.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
148	Rioting armed with a deadly weapon.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the District.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence, or not.	According as a warrant or summons may issue for the offence.	According as the offence is bailable or not.	The same as for the offence.	By the Court by which the offence is triable.

150	Hiring, engaging, or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged or employed.	Ditto.	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Ditto.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Ditto.	Summons.	Bailable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot, &c.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session or Magistrate of the District.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine or both.	Any Magistrate.
	If not committed.	Ditto.	Summons.	Ditto.	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
154	Owner or occupier of land not giving information of riot, &c.	Shall not arrest without warrant.	Ditto.	Ditto.	Fine of Rs. 1,000.	Magistrate of the District, or Subordinate Magistrate of 1st class.
155	Person for whose benefit, or on whose behalf a riot takes place, not using all lawful means to prevent it.	Ditto.	Ditto.	Ditto.	Fine.	Ditto.
156	Agent of owner or occupier, for whose benefit a riot is committed, not using all lawful means to prevent it.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for 6 months, or fine, or both.	Ditto.

CHAPTER VIII.—OFFENCES AGAINST PUBLIC TRANQUILLITY—*(continued)*.

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
158	Being hired to take part in an unlawful assembly or riot.	May arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 6 months, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.
159	Or to go armed.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
160	Committing affray.	Shall not arrest without warrant.	Summons.	Ditto.	Imprisonment of either description for 1 month, or fine of Rs. 100, or both.	Any Magistrate.
	CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.					
161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session or Magistrate of the District.
162	Taking a gratification in order, by corrupt or illegal means, to influence a public servant.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 year, or fine, or both.	Magistrate of the District.

164	Abetment by public servant of the offences defined in the last two preceding Sections with reference to himself.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session or Magistrate of the District.
165	Public servant obtaining any valuable thing without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 2 years, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 year, or fine, or both.	Ditto.
167	Public servant framing an incorrect document with intent to cause injury.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session or Magistrate of the District.
168	Public servant unlawfully engaging in trade.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 year, or fine, or both.	Magistrate of the District.
169	Public servant unlawfully buying or bidding for property.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased.	Ditto.
170	Personating a public servant.	May arrest without warrant.	Warrant.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Ditto.	Summons.	Ditto.	Imprisonment of either description for 3 months, or fine of Rs. 200, or both.	Ditto.

1	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
172	Absconding to avoid service of summons or other proceeding from a public servant.	Shall not arrest without warrant	Summons.	Bailable.	Simple imprisonment for 1 month, or fine of Rs. 500, or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.*
	If summons or notice require attendance in person, &c., in a Court of Justice.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine of Rs. 1,000, or both.	Ditto.†
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 month or fine of Rs. 500, or both.	Ditto.†
	If summons, &c., require attendance in person, &c, in a Court of Justice.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine of Rs. 1,000, or both.	Ditto.†
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 month, or fine of Rs. 500, or both.	Ditto.*
	If the order require personal attendance, &c., in a Court of Justice.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine of Rs. 1,000, or both.	Ditto.*

175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Shall not arrest without warrant.	Summons.	Bailable.	Simple imprisonment for 1 month, or fine of 500 Rs., or both.	Court in which the offence is committed, subject to the provisions of Ch. X of this Code, or if not committed in a Court, the Magistrate of the District, or Subordinate Magistrate of 1st class.
	If the document is required to be produced in or delivered to a Court of Justice.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine of 1,000 Rs., or both.	Ditto.
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 month, or fine of 500 Rs., or both.	Magistrate of the District.
	If the notice or information required respects the commission of an offence, &c.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine of 1,000 Rs., or both.	Ditto.
177	Knowingly furnishing false information to a public servant	Ditto.	Ditto.	Ditto.		Magistrate of the District, or Subordinate Magistrate of 1st class.
	If the information required respects the commission of an offence, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

* By Act VIII. of 1866, S. 1, made triable by any Magistrate.

† This "ditto" is not affected by the alteration in the foregoing.—Act VIII. of 1866, S. 3.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—*(continued)*.

1	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
178	Refusing oath when duly required to take oath by a public servant.	Shall not arrest without warrant.	Summons.	Bailable.	Simple imprisonment for 6 months, or fine of 1,000 Rs., or both.	Court in which the offence is committed, subject to the provisions of Ch. X of this Code, or if not committed in a Court, the Magistrate of the District, or Subordinate Magistrate of 1st class.
179	Being legally bound to state the truth, and refusing to answer questions.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 3 months, or fine of 500 Rs., or both.	Ditto.
181	Knowingly stating to a public servant on oath as true that which is false.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session or Magistrate of the District.

182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto.	Summons.	Ditto.	Imprisonment of either description for 6 months, or fine of 1,000 Rs., or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 month, or fine of 500 Rs., or both.	Ditto.
185	Bidding, by a person under a legal incapacity to purchase it, for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 month, or fine of 200 Rs., or both.	Ditto.
186	Obstructing public servant in discharge of his public functions.	Ditto.*	Ditto.	Ditto.	Imprisonment of either description for 3 months, or fine of 500 Rs., or both.	Ditto.
187	Omission to assist public servant when bound by law to give such assistance.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 month, or fine of 200 Rs., or both.	Ditto.
	Wilfully neglecting to aid a public servant, who demands aid in the execution of process, the prevention of offences, &c.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine of 500 Rs., or both.	Ditto.
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction or annoyance or injury to persons lawfully employed.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 month, or fine of 200 Rs., or both.	Ditto.

* Cf. Code of Criminal Procedure, S. 100, cl. 6.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—*(continued)*.

1. Section.	2. Offence.	3. Whether the Police may arrest without warrant or not.	4. Whether a warrant or a summons shall ordinarily issue in the first instance.	5. Whether bailable or not.	6. Punishment under the Indian Penal Code.	7. By what Court triable.
	If such disobedience causes danger to human life, health or safety, &c.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 6 months, or fine of 1,000 Rs., or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Ditto.*	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine, or both.	Ditto.

* Cf. Code of Criminal Procedure, S. 100, cl. 6.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 7 years and fine.*	Court of Session.
	Giving or fabricating false evidence in any other case.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.*	Ditto.

194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto.	Ditto.	Not bailable.	Transportation for life, or rigorous imprisonment for 10 years, and fine.*	Ditto.
	If innocent person be thereby convicted and executed.	Ditto.	Ditto.	Ditto.	Death or as above.	Ditto.
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation, or imprisonment for more than seven years.	Ditto.	Ditto.	Ditto.	The same as for the offence.*	Ditto.
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto.	Ditto.	According as the offence of giving such evidence is bailable or not.	The same as for giving or fabricating false evidence.*	Ditto.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto.	Ditto.	Bailable.	The same as for giving false evidence.*	Ditto.
198	Using as a true certificate one known to be false in a material point.	Ditto.	Ditto.	Ditto.	Ditto.*	Ditto.
199	False statement made in any declaration which is by law received as evidence.	Ditto.	Ditto.	Ditto.	Ditto.*	Ditto.
200	Using as true any such declaration known to be false.	Ditto.	Ditto.	Ditto.	Ditto.*	Ditto.
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
	If punishable with transportation, or imprisonment for 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.

*Also with whipping on a second conviction.—Act VI. of 1864, S. 4.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*(continued)*.

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If punishable with less than 10 years' imprisonment.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment for $\frac{1}{4}$th of the longest term and of the description provided for the offence, or fine, or both.	By the Court by which the offence is triable.
202	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto.	Summons.	Ditto.	Imprisonment of either description for 6 months, or fine, or both.	Magistrate of the District.
203	Giving false information respecting an offence committed.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
204	Secreting or destroying any document to prevent its production as evidence.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
206	Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.

207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Ditto.	Ditto.	Ditto.	Ditto.	Magistrate of the District.
209	False claim in a Court of Justice.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years and fine.	Ditto.
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
211	False charge of offence made with intent to injure.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
	If offence charged be capital or punishable with transportation for life, or imprisonment for 7 years, or upwards.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.*	Court of Session.
212	Harbouring an offender, if the offence be capital.	May arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for 5 years and fine.	Ditto.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.
	If punishable with imprisonment for 1 year, and not for 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment for $\frac{1}{4}$th of the longest term and of the description provided for the offence, or fine, or both.	By the Court by which the offence is triable.

* If the false charge be the commission of an unnatural offence (as defined in Penal Code, S. 377), and there has been a previous conviction of this offence, whipping may be imposed as an additional punishment.—Act VI. of 1864, S. 4.

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
213	Taking gift, &c., to screen an offender from punishment, if the offence be capital.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.
	If with imprisonment for less than 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment for $\frac{1}{4}$th of the longest term and of the description provided for the offence, or fine, or both.	By the Court by which the offence is triable.
214	Gift made to cause restoration of property in consideration of screening offender, if the offence be capital.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.
	If with imprisonment for less than 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment for $\frac{1}{4}$th of the longest term and of the description provided for the offence, or fine, or both.	By the Court by which the offence is triable

215	Taking gift to help to recover moveable property, of which a person has been deprived by an offence, without causing apprehension of offender.	May arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District.
216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.
	If with imprisonment for 1 year and not for 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment for one-fourth of the longest term and of the description provided for the offence, or fine, or both.	By the Court by which the offence is triable.
217	Public servant disobeying a direction of law with intent to save persons from punishment, or property from forfeiture.	Shall not arrest without warrant	Summons.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st class only.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto.	Warrant	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
219	Public servant in a judicial proceeding making or pronouncing an order, report, verdict or decision which he knows to be contrary to law.	Ditto.	Ditto	Ditto.	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
220	Commitment for trial or confinement by a person having authority who knows that he is acting contrary to law.	Ditto.	Ditto	Ditto.	Ditto.	Ditto.

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 7 years, with or without fine.	Court of Session.
	If punishable with transportation for life or imprisonment for 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, with or without fine.	Ditto.
	If with imprisonment for less than 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years with or without fine.	Magistrate of the District, or Subordinate Magistrate of 1st class.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice, if under sentence of death.	Ditto.	Ditto.	Not bailable.	Transportation for life, or imprisonment of either description for 14 years, with or without fine.	Court of Session.
	If under sentence of transportation for life or imprisonment, or penal servitude for 10 years or upwards.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years, with or without fine.	Ditto.
	If under sentence of imprisonment for less than 10 years.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session or Magistrate of the District.

223	Escape from confinement negligently suffered by a public servant.	Ditto.	Summons.	Ditto.	Simple imprisonment for 2 years, or, fine, or both	Magistrate of the District, or Subordinate Magistrate of 1st class.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
	If charged with an offence punishable with transportation for life or imprisonment for 10 years.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for 3 years and fine.	Court of Session or Magistrate of the District.
	If charged with a capital offence.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Court of Session.
	If the person is sentenced to transportation for life, or to transportation, penal servitude, or imprisonment for 10 years or upwards.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
	If under sentence of death.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
226	Unlawful return from transportation.	Ditto.	Ditto.	Ditto.	Transportation for life, and fine, and rigorous imprisonment for 3 years before transportation.	Ditto
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons.	Ditto.	Punishment of original sentence, or, if part of the punishment has been undergone, the residue.	By the Court by which the original offence was triable.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*(continued)*.

1. Section.	2. Offence.	3. Whether the Police may arrest without warrant or not.	4. Whether a warrant or a summons shall ordinarily issue in the first instance.	5. Whether bailable or not.	6. Punishment under the Indian Penal Code.	7. By what Court triable.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Shall not arrest without warrant.	Summons.	Bailable.	Simple imprisonment for 6 months, or fine of 1,000 Rs., or both.	Court in which the offence is committed, subject to the provisions contained in Chapter X. of this Code.
229	Personation of a Juror or Assessor	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

231	Counterfeiting or performing any part of the process of counterfeiting Coin.	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 7 years and fine.	Court of Session.
232	Counterfeiting or performing any part of the process of counterfeiting the Queen's Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
233	Making, buying, or selling instrument for the purpose of counterfeiting Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.

234	Making, buying, or selling instrument for the purpose of counterfeiting the Queen's Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
235	Possession of instrument or material for the purpose of using the same for counterfeiting Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.
	If Queen's Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
236	Abetting in India the counterfeiting out of British India of Coin.	Ditto.	Ditto.	Ditto.	The punishment provided for abetting the counterfeiting of such Coin within British India.	Ditto.
237	Import or Export of counterfeit Coin, knowing the same to be counterfeit.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine	Ditto.
238	Import or Export of counterfeits of the Queen's Coin, knowing the same to be counterfeit.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description fo 10 years and fine.	Ditto.
239	Having any counterfeit Coin known to be such when it came into possession, and delivering, &c., the same to any person.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 5 years and fine.	Ditto.
240	The same with respect to the Queen's Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
241	Knowingly delivering to another any counterfeit Coin as genuine which when first possessed the deliverer did not know to be counterfeit.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine of ten times the value of the Coin counterfeited, or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
242	Possession of counterfeit Coin by a person who knew it to be counterfeit when he became possessed thereof.	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 3 years and fine.	Court of Session.
243	Possession of Queen's Coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
244	Persons employed in a Mint causing Coin to be of a different weight or composition from that fixed by law.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
245	Unlawfully taking from a Mint any Coining instrument.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
246	Fraudulently diminishing the weight or altering the composition of any Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.
247	Fraudulently diminishing the weight or altering the composition of the Queen's Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
248	Altering appearance of any Coin with intent that it shall pass as a Coin of a different description.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.

249	Altering appearance of the Queen's Coin with intent that it shall pass as a Coin of a different description.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
250	Delivery to another of Coin possessed with the knowledge that it is altered.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 5 years and fine.	Ditto.
251	Delivery of Queen's coin possessed with the knowledge that it is altered.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
252	Possession of altered Coin by a person who knew it to be altered when he became possessed thereof.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.
253	Possession of Queen's Coin by a person who knew it to be altered when he became possessed thereof.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 5 years and fine.	Ditto.
254	Delivery to another of Coin as genuine, which, when first possessed, the deliverer did not know to be altered.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine of ten times the value of the Coin.	Magistrate of the District, or Subordinate Magistrate of 1st class.
255	Counterfeiting a Government Stamp.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for 10 years and fiue.	Court of Session.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government Stamp.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
257	Making, buying, or selling instrument for the purpose of counterfeiting a Government Stamp.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

CHARTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—*(continued)*.

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
258	Sale of counterfeit Government Stamp.	May arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 7 years and fine.	Court of Session.
259	Having possession of a counterfeit Government Stamp.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
260	Using as genuine a Government Stamp known to be counterfeit.	Shall not arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
261	Effacing any writing from a substance bearing a Government Stamp, or removing from a document a Stamp used for it, with intent to cause wrongful loss to Government.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
262	Using a Government Stamp known to have been before used.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.
263	Erasure of mark denoting that Stamp has been used.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.
265	Fraudulent use of false weight or measure.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
266	Being in possession of false weights or measures for fraudulent use.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
267	Making or selling false weights or measures for fraudulent use.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons	Bailable.	Imprisonment of either description for 6 months, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
271	Knowingly disobeying any quarantine rule.	Shall not arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for 6 months, or fine, or both.	Ditto.*

* By Act VIII. of 1866, S. 1, made triable by any Magistrate.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS—*(continued)*.

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
272	Adulterating food or drink for man intended for sale so as to make the same noxious.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 6 months, or fine of 1,000 Rs., or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.
273	Selling any food or drink as food and drink for man, knowing the same to be noxious.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
275	Offering for sale or issuing from a dispensary any drug or medical preparation, known to have been adulterated.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
276	Knowingly selling or issuing from a dispensary any drug or medical preparation, as a different drug or medical preparation.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for 3 months, or fine of 500 Rs., or both.	Ditto.

278	Making atmosphere noxious to health.	Shall not arrest without warrant.	Ditto.	Ditto.	Fine of 500 Rs.	Ditto.*
279	Driving or riding on a public way so rashly or negligently as to endanger human life, &c.	May arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for 6 months, or fine of 1,000 Rs., or both.	Ditto.*
280	Navigating any vessel so rashly or negligently as to endanger human life, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.†
281	Exhibition of a false light, mark, or buoy.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
282	Conveying for hire any person by water in a vessel in such a state, or so loaded, as to endanger his life.	Ditto.	Summons.	Ditto.	Imprisonment of either description for 6 months, or fine of 1,000 Rs., or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.
283	Causing danger, obstruction, or injury in any public way or line of navigation.	Ditto.	Ditto.	Ditto.	Fine of 200 Rs.	Ditto.
284	Dealing with any poisonous substance so as to endanger human life, &c.	Shall not arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for 6 months, or fine of 1,000 Rs., or both.	Ditto.
285	Dealing with fire or any combustible matter so as to endanger human life, &c.	May arrest without warrant.	Ditto.	Ditto.	Ditto.	Ditto.*
286	So dealing with any explosive substance.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.*
287	So dealing with any machinery.	Shall not arrest without warrant.	Ditto.	Ditto.	Ditto.	Ditto.†

* By Act VIII. of 1866, S. 1, made triable by any Magistrate.
† This 'Ditto' is not affected by the amendment of the foregoing.—Act VIII. of 1866, S. 3.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS—*(continued)*.

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
288	A person omitting to guard against probable danger to human life, by the fall of any building, over which he has a right entitling him to pull it down or repair it.	May arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 6 months, or fine of 1,000 Rs., or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt from such animal.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.*
290	Committing a public nuisance.	Shall not arrest without warrant.	Ditto.	Ditto.	Fine of 200 Rs.	Ditto.*
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine, or both.	Ditto.†
292	Sale, &c., of obscene books, &c.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for 3 months, or fine, or both.	Ditto.
293	Having in possession obscene books, &c., for sale or exhibition.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
294	Obscene songs.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

* By Act VIII. of 1866, S. 1, made triable by any Magistrate.
† This 'Ditto' is not affected by the amendment of the foregoing.—Act VIII. of 1866, S. 3.

CHAPTER XV.—OFFENCES RELATING TO RELIGION.

295	Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District.
296	Causing a disturbance to an assembly engaged in religious worship.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine, or both.	Ditto.
297	Trespassing in a place of worship or sepulture, disturbing funeral with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
298	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight of any person, with intention to wound his religious feelings.	Shall not arrest without warrant.	Ditto.	Ditto.	Ditto.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.

Offences Affecting Life.

302	Murder.	May arrest without warrant.	Warrant.	Not bailable.	Death, transportation for life, and fine.	Court of Session.
303	Murder by a person under sentence of transportation for life.	Ditto.	Ditto.	Ditto.	Death.	Ditto.
304	Culpable homicide not amounting to murder if act by which the death is caused is done with intention of causing death, &c.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*(continued)*.

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c.	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 10 years, or fine, or both.	Court of Session.
305	Abetment of suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	Ditto.	Ditto.	Ditto.	Death, or transportation for life, or imprisonment for 10 years, and fine.	Ditto.
306	Abetting the commission of suicide.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
307	Attempt to murder.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
	If such act cause hurt to any person.	Ditto.	Ditto.	Ditto.	Transportation for life, or as above.	Ditto.
308	Attempt to commit culpable homicide.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
	If such act cause hurt to any person.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years, orfine, or bot h.	Ditto.
309	Attempt to commit suicide.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 year and fine.	Magistrate of the District.
311	Being a thug.	Ditto.	Ditto.	Not bailable.	Transportation for life, and fine.	Court of Session.

312	Causing miscarriage.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
	If the woman be quick with child.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
313	Causing miscarriage without woman's consent.	Ditto.	Ditto.	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
314	Death caused by an act done with intent to cause miscarriage.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
	If act done without woman's consent.	Ditto.	Ditto.	Ditto.	Transportation for life, or as above.	Ditto.
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
317	Exposure of a child under 12 years by parent or person having care of it with intention of wholly abandoning it.	May arrest without warrant.	Ditto.	Bailable.	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
318	Concealment of birth by secret disposal of dead body.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*(continued)*.

Of Hurt.

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
323	Voluntarily causing hurt.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 1 year, or fine of 1,000 Rs., or both.	Any Magistrate.
324	Voluntarily causing hurt by dangerous weapons or means.	May arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st class.
325	Voluntarily causing grievous hurt	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Court of Session.*
326	Voluntarily causing grievous hurt by dangerous weapons or means.	Ditto.	Ditto.	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.†
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do an illegal act which may facilitate the commission of an offence.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
328	Administering stupefying drug with intent to cause hurt.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

* By Act VIII. of 1866, Section 1, made triable by "any Magistrate."

† This 'Ditto' is not affected by the amendment of the foregoing.—Act VIII. of 1866, S. 3.

329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do an illegal act which may facilitate the commission of an offence.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for 7 years and fine.	Ditto.
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for 10 years and fine.	Ditto.
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for 3 years or fine, or both.	Ditto.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for 10 years and fine.	Ditto.
334	Voluntarily causing hurt on grave and sudden provocation not intending to hurt any other than the person who gave the provocation.	Ditto.	Summons.	Bailable.	Imprisonment of either description for 1 month, or fine of 500 Rs., or both.	Any Magistrate.
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 4 years, or fine of 2,000 Rs., or both.	Court of Session or Magistrate of the District.
336	Doing any act which endangers human life or the personal safety of others.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 months, or fine of 250 Rs., or both.	Any Magistrate.
337	Causing hurt by an act which endangers human life, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 6 months, or fine of 500 Rs., or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*(continued)*.

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
338	Causing grievous hurt by an act which endangers human life, &c.	May arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 2 years, or fine of 1,000 Rs., or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.
	Of wrongful restraint and wrongful confinement.					
341	Wrongfully restraining any person.	May arrest without warrant.	Summons.	Bailable.	Simple imprisonment for 1 month, or fine of 500 Rs., or both.	Any Magistrate.
332	Wrongfully confining any person	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine of 1,000 Rs., or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.
343	Wrongfully confining for three or more days.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
344	Wrongfully confining for ten or more days.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session or Magistrate of the District.
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for 2 years, in addition to imprisonment under any other Section.	Court of Session.

346	Wrongful confinement in secret...	May arrest without warrant.	Ditto.	Ditto.	Ditto.	Ditto.
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session or Magistrate of the District.
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
	Of Criminal Force and Assault					
352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 3 months, or fine of 500 Rs., or both	Any Magistrate.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto.	Ditto.	Ditto.	Ditto.*	Ditto.
355	Assault or criminal force with intent to dishonor a person otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons.	Ditto.	Ditto.	Ditto.
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant.	Not bailable.	Ditto.	Any Magistrate.

* And, on a second conviction, with whipping.—Act VI. of 1864, S. 4.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*(continued)*.

Of Criminal Force and Assault—(continued).

1. Section.	2. Offence.	3. Whether the Police may arrest without warrant or not.	4. Whether a warrant or a summons shall ordinarily issue in the first instance.	5. Whether bailable or not.	6. Punishment under the Indian Penal Code.	7. By what Court triable.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	May arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 1 year, or fine of 1,000 Rs., or both.	Any Magistrate.
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons.	Ditto.	Simple imprisonment for 1 month, or fine of 200 Rs., or both.	Ditto.

Of Kidnapping, Forcible Abduction, Slavery, and forced labor.

363	Kidnaping.	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 7 years and fine.	Court of Session.
364	Kidnapping or abducting in order to murder.	Ditto.	Ditto.	Ditto.	Transportation for life, or rigorous imprisonment for 10 years and fine.	Ditto.
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.

366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
368	Concealing or keeping in confinement a kidnapped person.	Ditto.	Ditto.	Ditto.	Punishment for kidnapping or abduction.	Ditto.
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Ditto.	Bailable.	Ditto.	Ditto.
371	Habitual dealing in slaves.	May arrest without warrant.	Ditto.	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
372	Selling or letting to hire a minor for the purpose of prostitution.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
373	Buying or obtaining possession of a minor for the same purpose.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
374	Unlawful compulsory labor.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*(continued)*.

Of Rape.

1. Section.	2. Offence.	3. Whether the Police may arrest without warrant or not.	4. Whether a warrant or a summons shall ordinarily issue in the first instance.	5. Whether bailable or not.	6. Punishment under the Indian Penal Code.	7. By what Court triable.
376	Rape.	May arrest without warrant.	Warrant.	Not bailable.	Transportation for life, or imprisonment of either description for 10 years and fine.*	Court of Session.

Of Unnatural Offences.

377	Unnatural offences.	May arrest without warrant.	Warrant.	Not bailable.	Transportation for life, or imprisonment of either description for 10 years and fine.*	Court of Session.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.

Of Theft.

379	Theft.	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 3 years, or fine, or both.†	Court of Session or Magistrate of the District.‡
380	Theft in a building, tent, or vessel.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.†	Ditto.§

381	Theft by a clerk or servant of property in possession of master or employer.	Ditto.	Ditto.	Ditto.	Ditto.†	Ditto.‖
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing such theft, or to retiring after committing it, or to retaining property taken by it.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for 10 years and fine.†	Court of Session.

Of Extortion.

384	Extortion.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the District.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for 10 years and fine.	Court of Session.
387	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.†	Ditto.
	If the offence threatened be an unnatural offence.	Ditto.	Ditto.	Ditto.	Transportation for life.	Ditto.

*And, on second conviction, with whipping.—Act VI. of 1864, S. 4. †Or with whipping.—Act VI. of 1864, S. 2; and, on second conviction, with whipping in addition.—S. 3

‡ By Act XXXIII. of 1860, S. 1, made triable by "Court of Session or any Magistrate."

§ By Act VIII. of 1866, S. 1, made triable by "any Magistrate."

‖ This 'Ditto' is not affected by the alteration in the foregoing.—Act VIII. of 1866, S. 3.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—*(continued)*.

Of Extortion—(continued).

1. Section.	2. Offence.	3. Whether the Police may arrest without warrant or not.	4. Whether a warrant or a summons shall ordinarily issue in the first instance.	5. Whether bailable or not.	6. Punishment under the Indian Penal Code.	7. By what Court triable.
389	Putting person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion.	Shall not arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 10 years and fine.*	Court of Session.
	If the offence be an unnatural offence.	Ditto.	Ditto.	Ditto.	Transportation for life.	Ditto.

Of Robbery and Dacoity.

392	Robbery.	May arrest without warrant.	Warrant.	Not bailable.	Rigorous imprisonment for 10 years and fine.†	Court of Session.‡
	If committed on the highway between sunset and sunrise.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for 14 years and fine.	Ditto.‡
393	Attempt to commit robbery.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for 7 years and fine.†	Ditto.‡
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person generally concerned in such robbery.	Ditto.	Ditto.	Ditto.	Transportion for life, or rigorous imprisonment for 10 years and fine.†	Ditto.§
395	Dacoity.	Ditto.	Ditto.	Ditto.	Ditto.†	Ditto.

396	Murder in dacoity.	Ditto.	Ditto.	Ditto.	Death, transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
397	Robbery or dacoity with attempt to cause death or grievous hurt.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for not less than 7 years.	Ditto.
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
399	Making preparation to commit dacoity.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for 10 years and fine.	Ditto.
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto.	Ditto.	Ditto.	Transportation for life, or as above.	Ditto.
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for 7 years and fine.	Ditto.
402	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

* Or with whipping.—Act VI. of 1864, S. 2. And on second conviction with whipping in addition,—S. 3

† And with whipping, on a second conviction.—Act VI. of 1864, S. 4.

‡ By Act VIII. of 1866. S. 2, made triable by the "Court of Session or Magistrate of the District."

‖ This "Ditto" is not affected by the alteration in the foregoing.—Act VIII. of 1866, S. 3.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*(continued)*.

Of Criminal Misappropriation of Property.

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
403	Dishonest misappropriation of moveable property or converting it to one's own use.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st class.
	If by clerk or person employed by deceased.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.

Of Criminal Breach of Trust.

406	Criminal breach of trust.	Shall not arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st class.

407	Criminal breach of trust by a carrier, wharfinger, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
408	Criminal breach of trust by a clerk or servant.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
409	Criminal breach of trust by public servant, or by banker, merchant, or agent, &c.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
	Of the Receiving of Stolen Property.					
411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 3 years, or fine, or both.*	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st class.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto.	Ditto.	Ditto.	Transportation for life, or rigorous imprisonment for 10 years, and fine*	Court of Session.
413	Habitually dealing in stolen property.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.†	Ditto.
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Ditto.	Ditto.	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st class.

* Or with whipping—Act VI of 1864, S. 2 And on second conviction with whipping in addition.—S. 3.
† And on a second conviction with whipping.—Act VI. of 1864, S. 4.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*(continued)*.

Of Cheating.

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
417	*Cheating.*	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.
418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st class.
419	Cheating by personation.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
420	Cheating and thereby dishonestly inducing delivery of property, or the altering or destroying of a valuable security.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years, and fine.	Court of Session.

Of Fraudulent Deeds and Dispositions of Property.

421	Fraudulent removal or concealment of property, &c., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant.	Bailable	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.
422	Fraudulent preventing from being made available for his creditors a debt or demand due to the offender.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
424	Fraudulent removal or concealment of property of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

Of Mischief.

426	Mischief.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 3 months, or fine, or both.	Any Magistrate.
427	Mischief, and thereby causing damage to the amount of 50 Rupees or upwards.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.
428	Mischief by killing, poisoning, maiming, or rendering useless, any animal of the value of 10 Rupees or upwards.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*(continued)*.
Of Mischief—(continued).

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
429	Mischief by killing, poisoning, maiming, or rendering useless, any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 Rupees or upwards.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st class.
430	Mischief by causing diminution of supply of water for agricultural purposes, &c.	May arrest without warrant.	Ditto.	Ditto.	Ditto.	Ditto.
431	Mischief by injury to public road, bridge, river, or navigable channel, and rendering it impassable or less safe for travelling, or conveying property.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
432	Mischief by causing inundation or obstruction to public drainage attended with damage.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
433	Mischief by destroying or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.

434	Mischief by destroying or moving, &c., a land-mark fixed by public authority.	Shall not arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the District or Subordinate Magistrate of 1st class.
435	Mischief by fire or explosive substance, with intent to cause damage to amount of 100 Rupees or upwards.	May arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for 7 years, and fine.	Court of Session.
436	Mischief by fire or explosive substance, with intent to destroy a house, &c.	Ditto.	Ditto.	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years, and fine.	Ditto.
438	The mischief described in the last Section when committed by fire or any explosive substance.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
439	Running vessel ashore with intent to commit theft, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years, and fine.	Ditto.
440	Mischief committed after preparation made for causing death or hurt, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 5 years, and fine.	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*(continued)*.

Of Criminal Trespass.

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
447	Criminal trespass.	May arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 3 months, or fine of 500 Rs., or both.	Any Magistrate.
448	House-trespass.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for 1 year, or fine of 1,000 Rs., or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.*
449	House-trespass in order to the commission of an offence punishable with death.	Ditto.	Ditto.	Not bailable.	Transportaion for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years, and fine.	Ditto.
451	House-trespass in order to the commission of an offence punishable with imprisonment.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for 2 years, and fine.	Magistrate of the District, or Subordinate Magistrate of 1st class.*

* By Act VIII. of 1866, S. 1, made triable by any Magistrate.

	If the offence is theft ...	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for 7 years and fine.	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st class.*
452	House-trespass, having made preparation for causing hurt, assault, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.†
453	Lurking house-trespass or house-breaking.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years and fine.	Magistrate of the District, or Subordinate Magistrate of 1st class.
454	Lurking house-trespass, or house-breaking in order to the commission of an offence punishable with imprisonment.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.‡	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st class.
	If the offence is theft ...	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.‡	Ditto.
455	Lurking house-trespass, or house-breaking after preparation made for causing hurt, assault, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Court of Session.
456	Lurking house-trespass or house-breaking by night.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st class.
457	Lurking house-trespass, or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 5 years and fine.‡	Court of Session, or Magistrate of the District. §

* By Act VIII. of 1866, S 1, made triable by "any Magistrate."

† This "Ditto" is not affected by the foregoing alteration.—Act VIII. of 1866, S. 3.

‡ Whipping is, by S. 2 Act VI. of 1864, made an *alternative* punishment for this offence under certain circumstances, and, by S. 4. it is further made an *additional* punishment also under special circumstances specified therein.

§ By Act XXXIII. of 1861, S. 2, made triable also by a Subordinate Magistrate of 1st class.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*(continued)*.

Of Criminal Trespass—(continued).

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If the offence is theft ...	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 14 years and fine.*	Court of Session or Magistrate of the District †
458	Lurking house-trespass, or house-breaking by night after preparation made for causing hurt, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Court of Session.
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto	Ditto.	Bailable.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fradulently opening the same.	Ditto	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st class.

* Whipping is, by S. 2, Act VI. of 1864, made an *alternative* punishment for this offence under certain circumstances, and, by S. 4, it is made an *additional* punishment also under certain special circumstances specified therein.

† By Act XXXIII. of 1861, S. 2, made triable by Subordinate Magistrate of 1st class.

465	Forgery.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 2 years, or fine, or both.*	Court of Session.
466	Forgery of a record of a Court of Justice or of a Register of Births, &c., kept by a public servant.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for 7 years and fine.*	Ditto.
467	Forgery of a valuable security, will, or authority to make or transfer any public security, or to receive any money, &c.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years and fine.*	Ditto.
468	Forgery for the purpose of cheating.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.*	Ditto.
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for 3 years and fine.*	Ditto.
471	Using as genuine a forged document which is known to be forged.	Ditto.	Ditto.	Ditto.	Punishment for forgery.—	Ditto.
472	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under S. 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Ditto.	Ditto.	Not bailable.	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto.
473	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable otherwise than under S. 467 of the Indian Penal Code, or possessing with like intent any such seal, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.

* Or, on a second conviction, with whipping.—Act VI. of 1864, S. 4.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS—*(continued)*.

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine.	Shall not arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 7 years and fine.	Court of Session.
	If the document is a valuable security or will.	Ditto.	Ditto.	Ditto.	Transportation for life, or as above.	Ditto.
475	Counterfeiting a device or mark used for authenticating documents described in S. 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
476	Counterfeiting a device or mark used for authenticating documents other than those described in S. 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting a will, &c.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto.

482	Using a false trade or property-mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.
483	Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.	Ditto.	Summons.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session, or Magistrate of the District.
485	Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
486	Knowingly selling goods marked with a counterfeit property or trade mark.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.
487	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st class.
488	Making use of any such false mark.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
489	Removing, destroying, or defacing any property-mark with intent to cause injury.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.

CHAPTER XIX.—OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

1.	2.	3.	4.	5.	6.	7.
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490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 1 month, or fine of 100 Rs., or both.	Magistrate of the District, or Subordinate Magistrate of 1st class.
491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind, or disease, and voluntarily omitting to do so.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 months, or fine of 200 Rs., or both.	Ditto.
492	Being bound by a contract to render personal service for a certain period at a distant place to which the employee is conveyed at the expense of the employer, and there voluntarily deserting the service, or refusing to perform the duty.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 month, or fine of double the expense incurred, or both.	Ditto.

493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him, and to cohabit with him in that belief.	Shall not arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 10 years and fine.	Court of Session.
494	Marrying again during the lifetime of a husband or wife.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for 7 years and fine.	Ditto.
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for 10 years and fine.	Ditto.
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
497	Adultery.—	Ditto.	Ditto.	Bailable.	Imprisonment of either description for 5 years, or fine, or both.	Ditto.
498	Enticing or taking away or detaining with a criminal intent a married woman.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District.

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Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instances.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
500	Defamation.	Shall not arrest without warrant.	Warrant.	Bailable.	Simple imprisonment for 2 years, or fine, or both.	Magistrate of the District.
501	Printing or engraving matter knowing it to be defamatory.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

CHAPTER XXII.—OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
505	False statement, rumours, &c., circulated with intent to cause mutiny or offences against the public peace.	Ditto.	Ditto.	Not bailable.	Ditto	Magistrate of the District.

506	Criminal intimidation ...	Ditto.	Ditto.	Bailable.	Ditto.	Magistrate of the District, or Subordinate Magistrate of 1st class.
	If threat be to cause death or grievous hurt, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
507	Criminal intimidation by anonymous communication, or having taken precaution to conceal whence the threat comes.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, in addition to the punishment under above Section.	Ditto.
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the District.
509	Uttering any word, or making any gesture intended to insult the modesty of a woman.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 year, or fine, or both.	Ditto.
510	Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 24 hours, or fine of Rs. 10, or both.	Any Magistrate.

CHAPTER XXIII.—OF ATTEMPTS TO COMMIT OFFENCES.

511	Attempting to commit offences punishable with imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the Police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.	According as the offence contemplated by the offender is bailable or not.	Transportation or imprisonment not exceeding half of the longest term and of the description provided for the offence, or fine, or both.	By the Court by which the offence attempted is triable.

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APPENDIX A.

MISCELLANEOUS ACTS.

ACT No. XXXIII. OF 1861.

(Received the assent of the Governor-General on the 22nd November 1861).

An Act to amend the Schedule annexed to the Code of Criminal Procedure.

WHEREAS it is expedient to amend the Schedule annexed to the Code of Criminal Procedure; It is enacted as follows:—

Amendment of the Schedule as regards Section 379 of the Penal Code.

I. In lieu of the words "Court of Session or Magistrate of the District" in column 7 of the Schedule annexed to the Code of Criminal Procedure, referring to Section 379 of the Indian Penal Code, there shall be read the words "Court of Session or any Magistrate."

"Court of Session" and "any Magistrate" are defined respectively in S. 13 of the Code and Explanatory Note 6 at the commencement of the Schedule.

Amendment of the Schedule as regards Section 457 of the Penal Code.

II. In lieu of the words "Court of Session or Magistrate of the District," in the two clauses of column 7 of the said Schedule, referring to the provisions contained in S. 457 of the Indian Penal Code, there shall be read the words "Court of Session, or Magistrate of District, or Subordinate Magistrate of the 1st class."

For the definitions of the terms "Court of Session," "Magistrate of the District," "Subordinate Magistrate of the 1st class," see Ss. 13, 14, 18, 22 of the Code and Explanatry Note 5 of the Schedule.

Construction.

III. This Act shall be read and taken as part of the Code of Criminal Procedure.

ACT No. VIII. OF 1866.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 2nd March 1866).

An Act further to amend the Schedule annexed to the Code of Criminal Procedure.

Preamble.

WHEREAS it is expedient further to amend the Schedule annexed to the Code of Criminal Procedure; It is enacted as follows:—

Amendment of Schedule as regards Sections 172, 174, 271, 277, 278, 279, 285, 286, 289, 290, 325, 380, 440, and 451, of the Indian Penal Code.

1. In lieu of the words in the parts of column 7 of the said Schedule, respectively referring to Ss. 172, 174, 271, 277, 278, 279, 285, 286, 289, 290, 325, 380, 448, and 451, of the Indian Penal Code, there shall be read the words "Any Magistrate."

The term "Any Magistrate' is explained in the 6th note to the Schedule of the Code.

2. In lieu of the words in the parts of the said column respectively referring to Ss. 392 and 393 of the Indian Penal Code, there shall be read the words "Court of Session or Magistrate of the District."

Amendment of Schedule as regards Sections 392 and 393 of the Indian Penal Code.

The terms "Court of Session," "Magistrate of the District," are defined and explained in Ss. 13, 14, 18, of the Code, and the 5th note to the Schedule.

Nothing in this Act to alter effect of the rest of the Schedule.

3. Nothing herein contained shall be taken to alter the effect which any other part of the said Schedule had immediately before the passing of this Act.

This Act to be read with the Code of Criminal Procedure.

4. This Act shall be read with, and taken as part of, the Code of Criminal Procedure.

ACT No. XV. OF 1862.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 1st May 1862).

An Act to amend the Code of Criminal Procedure.

Preamble.

WHEREAS it is expedient to amend the Code of Criminal Procedure in regard to the extension thereof to any parts of the territories not subject to the General Regulations; It is enacted as follows:—

With what restrictions, &c., Code of Criminal Procedure may be extended to a Non-Regulation Province.

I. When, under the provisions of S. 445 of the Code of Criminal Procedure, the said Code has been or shall be extended to any part of the territories not subject to the General Regulations of Bengal, Madras, or Bombay, it shall be lawful for the Governor-General in Council, or for the Local Government of such territory, to vest the Chief Officer charged with the Executive administration of a District in Criminal matters, by whatever designation such Officer is called, with power to try all offences not punishable with death, and under the provisions of the said Code to pass sentence of imprisonment of either description for a term not exceeding seven years, including such solitary confinement as is authorized by law, or fine, or both.

For the law regarding sentences of "solitary confinement," see Ss. 73, 74 of the Indian Penal Code. That regarding sentences of "fine" is contained in Ss. 63—70 of the same Code.

S. 277 of the Code of Criminal Procedure lays down the course to be followed by a Subordinate Magistrate in a case within his jurisdiction, in which he finds the accused person guilty, but considers that the offence established calls for a more severe punishment than he is competent to adjudge. If the Magistrate to whom such a case is referred has been vested with powers under Act XV. of 1862, and the offence be one triable only by the Magistrate of the District, he is of course limited to his ordinary jurisdiction. But if the offence be one triable jointly by the Magistrate of the District and Court of Session, and a severer punishment than a Magistrate is competent to award is considered necessary, the Magistrate of the District can act under Act XV. of 1862, but he must conduct the whole trial, that is, he must examine all the witnesses and take the defence. If the offence be one triable only by a Court of Session, a reference under S. 277 is illegal.—4 W. R., 12 C. L..

A Magistrate vested with powers under Act XV. of 1862 can pass sentence of transportation for seven years.—Boodhoa, 9 W. R., 6. It should be recorded in such a sentence

that under S. 59, Penal Code, such transportation is imposed instead of imprisonment.—Calcutta High Court, Cir. 9, 1866. A sentence of transportation for a term less than seven years is illegal.—See S. 59, Penal Code.

When Sudder Court consists of one Judge.

II. When the Sudder Court in any part of the Territories to which the said Code of Criminal Procedure has been or shall be extended as aforesaid, shall consist of a single Judge, such Judge shall have all the powers of two or more Judges of the Sudder Court under Ss. 398, 401, and 420 of the said Code.

"Sudder Court" is by S. 19 of the Code defined to be the "highest Criminal Court of appeal or revision." Ss. 398 and 401 relate to cases referred for the confirmation of sentences of death passed by Courts of Session, and S. 420 to the modification, amendment, or reversal by the Sudder Court of a sentence or order passed by a Lower Court.

Construction.

III. This Act shall be taken and read as par of the Code of Criminal Procedure.

ACT No. XVII. OF 1862

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL

(Received the assent of the Governor-General on the 1st May, 1862).

An Act to repeal certain Regulations and Acts relating to Criminal Law and Procedure.

Preamble.

Whereas by Act XLV. of 1860 a Penal Code has been prescribed for British India, and the said Code came into operation on the 1st day of January 1862; and whereas by Act XXV. of 1861 a Code of Procedure is provided for the Courts of Criminal Judicature not established by Royal Charter, and the said Code likewise came into operation on the 1st day of January 1862 in the Presidencies of Bengal, Madras, and Bombay, and was at the same time, or has since been or hereafter may be, extended to other parts of British India; and whereas it is expedient to repeal, in the manner hereinafter provided, certain Regulations and Acts relating to Criminal Law and Procedure; It is enacted as follows:—

Repeal of Regulations and Acts providing for the punishment of offences.

I. The several Regulations and Acts set forth in the Schedule hereunto annexed, so far as they provide for the punishment of offences, shall be held to have been and are hereby repealed from the 1st day of January 1862 in the Presidencies of Bengal, Madras, and Bombay, and in the other parts of British India, in which such Regulations and Acts, or any of them, were in force on the said 1st day of January 1862, except in so far as they repeal the whole or any part of any other Regulation or Act, and except as to any offence committed before the said 1st day of January 1862.

Exception.

Repeal of Regulations and Acts not repealed by last Section, in places where Code of Criminal Procedure came into operation on 1st January 1862.

II. To the extent expressed in the Schedule annexed to this Act, the Regulations and Acts set forth therein, which are not repealed by the last preceding Section, shall, except in so far as they repeal the whole or any part of any other Regulation or Act, and except as to any offence committed before the said 1st day of January

1862, be held to have been and are hereby repealed from the said date in the Presidencies of Bengal, Madras, and Bombay, and in the other parts of British India in which such Regulations and Acts, or any of them, were in force on the said 1st day of January 1862, and in which the said Code of Criminal Procedure came into operation on such date.

Repeal of the same Regulations and Acts in places where the Code of Criminal Procedure did not come into operation on 1st January 1862.

III. To the extent expressed in the Schedule annexed to this Act, the Regulations and Acts set forth therein, which are not repealed by Section I. of this Act, and which were in force on the said 1st day of January 1862, in any part of British India in which the said Code of Criminal Procedure did not come into operation on the said 1st day of January 1862, shall, except in so far as they repeal the whole or any part of any other Regulation or Act, and except as to any offence committed before the date on which the said Code shall have been or shall hereafter be extended to such part of British India, be held to have been or shall be repealed in such part of British India from the date on which the said Code shall have been or shall be so extended thereto.

Procedure and powers in the investigation and trial of offences committed before 1st January 1862.

IV. In the investigation and trial of offences committed before the said 1st day of January 1862, the Criminal Courts of the several grades and the Officers of Police shall, after the passing of this Act, be guided by the provisions of the Code of Criminal Procedure, so far as the same can be applied, wherever the said Code shall be in operation at the time of such investigation or trial; and for the trial and punishment of such offences such Courts shall exercise the jurisdiction and powers vested in them under the said Code of Criminal Procedure, provided that no person convicted of any such offence shall be liable to any other punishment than that to which he would have been liable, had he been convicted of such offence before the said first day of January 1862, and that no such person, who shall claim the same, shall be deprived of any right of appeal or reference to a Sudder Court which he would have enjoyed, had the trial been held under any of the Regulations or Acts hereby repealed.

A person tried by Jury and convicted of an offence committed before 1st January 1862, is entitled to an appeal on the facts as well as on the law of the case.—Grish Chunder Bundoo, 6 W. R., 1. He is also entitled to the opinion of the Sessions Judge and can claim any right of reference to a Superior Court which he might have had under the former law. The Judge having omitted to record his opinion, the record of the case was returned to him for that purpose.—Chukkun *alias* Juggun Goallah, 3 W. R., 58.

Procedure in the investigation and trial in places to which the Code of Criminal Procedure is extended after passing of this Act, of offences committed before date of extension.

V. In any part of British India to which the Code of Criminal Procedure shall be extended after the passing of this Act, the said Code shall, subject to the provisions of the last preceding Section, be followed in the investigation and trial of any offences committed before the date of such extension.

Saving of certain sentences passed for offences committed before Code of Criminal Procedure came into operation, by reason only of the procedure of that Code having been followed.

VI. No sentence passed before the passing of this Act for any offence which shall have been committed before the 1st day of January 1862, (or whenever the said Code of Criminal Procedure shall not have been extended to any place in British India on the said 1st day of January 1862, then before the date on which the said Code shall have been extended to such place,)

shall be liable to be quashed or set aside by reason only of the procedure in the investigation or trial of any such offence having been wholly or in part the procedure provided by the said Code of Criminal Procedure. Provided that if, in any such case, it shall appear that the accused party has been deprived of any right of appeal or reference to a Sudder Court, which he would have enjoyed, had the trial been held under any of the Regulations or Acts hereby repealed, the Sudder Court, or the highest Court of Criminal Jurisdiction, may call for the proceedings in the case, and pass such order thereon as it may deem just and proper.

Proviso.

VII. Nothing in this Act shall affect any sentence or order passed, or any proceeding held, or any act done previously to the passing of this Act, and in accordance with any Act or Regulation repealed by this Act.

Saving of certain sentences passed, &c., before passing of this Act.

SCHEDULE OF REGULATIONS AND ACTS REPEALED.

Reference to Regulation or Act.	Extent of Repeal.
Act XIII. of 1835	The whole Act.
Act XV. of 1835	The whole Act.
Act XVIII. of 1835	The whole Act.
Act XX. of 1835 ...	The whole Act.
Act VI. of 1836	The whole Act.
Act XXX. of 1836	The whole Act.
Act XVIII. of 1837	The whole Act.
Act XXI. of 1837	Section 4.
Act XXIII. of 1837	The whole Act.
Act XXVII. of 1837	Section 12.
Act XXX. of 1837	The whole Act.
Act XXXIII. of 1837	The whole Act.
Act XXXVII. of 1837	The whole Act.
Act III. of 1838	The whole Act.
Act IX. of 1838	The whole Act.
Act XXVI. of 1838	The whole Act.
Act II. of 1839	The whole Act.
Act XVIII. of 1839	The whole Act.
Act XIX. of 1839	The whole Act.
Act I. of 1840	The whole Act.
Act IV. of 1840	The whole Act.
Act V. of 1840	Sections 2 and 3.
Act XI. of 1840	Sections 2 and 3.
Act XVII. of 1841	Section 2, so much as was not repealed by Act X. of 1861.
Act XXI. of 1841	The whole Act.
Act XXX. of 1841	Section 1.
Act XXXI. of 1841	The whole Act.
Act VIII. of 1842	The whole Act.
Act XVIII. of 1842	The whole Act.
Act IV. of 1843	The whole Act.
Act VII. of 1843	Sections 27, 29, 30, 31, 32, 33, 34, 36, 37 41, 42, 43, 51, 54, 55, and 56.
Act XV. of 1843	In so far as it relates to the powers of Deputy Magistrates or Judicial Officers.
Act XXIV. of 1843	The whole Act.

SCHEDULE OF REGULATIONS AND ACTS REPEALED.

Reference to Regulation or Act.	Extent of Repeal.
Act III. of 1844	The whole Act.
Act XIV. of 1844	The whole Act.
Act II. of 1845	The whole Act.
Act X. of 1845	The whole Act.
Act XVIII. of 1845	The whole Act.
Act XXVII. of 1845	The whole Act.
Act XXX. of 1845	The whole Act.
Act VII. of 1846	The whole Act.
Act X. of 1847	The whole Act.
Act XX. of 1847	Section 4.
Act I. of 1848	The whole Act.
Act III. of 1848	The whole Act.
Act V. of 1848	The whole Act.
Act XI. of 1848	The whole Act.
Act XIX. of 1848	The whole Act.
Act IV. of 1849	The whole Act.
Act XIV. of 1849	The whole Act.
Act VII. of 1850	The whole Act.
Act XIII. of 1850	The whole Act.
Act XVI. of 1850	The whole Act.
Act XXXVIII of 1850	The whole Act.
Act IV. of 1851	The whole Act.
Act XVI. of 1851	The whole Act.
Act XXXII. of 1852	The whole Act.
Act I of 1853	The whole Act.
Act VII. of 1854	So much of the Act as relates to warrants issued otherwise than under the provisions of the said Act.
Act X. of 1854	So much of Section 1 as recites that the order passed by any Assistant or Deputy Magistrate shall be subject to appeal, and Sections 2 and 3.
Act XII. of 1854	The whole Act.
Act XV. of 1855	The whole Act.
Act XVI. of 1855	The whole Act.
Act XIX. of 1855	Section 5.
Act I. of 1856	The whole Act.
Act II. of 1856	The whole Act.
Act IV. of 1856	The whole Act.
Act XVII. of 1856	The whole Act.
Act III. of 1857	So much of Section 13 as provides that offences under the said Section shall be dealt with by the Police Officers according to the provisions of Section 25 Regulation XX. of 1817 of the Bengal Code, Section 27 Regulation XI. of 1816 of the Madras Code, and Section 43 Regulation XII. of 1827 of the Bombay Code.
Act VII. of 1857	Section 4.
Act XI. of 1857	Sections 1 and 2.
Act XXIV. of 1859	Sections 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, and 43, and so much of the Schedule as repeals Clause 1 Section 11 of Regulation XI. of 1816.

SCHEDULE OF REGULATIONS AND ACTS REPEALED.

Reference to Regulation or Act.	Extent of Repeal.
Act III. of 1860	The whole Act.
Act XVII. of 1860	Section 11.
Act XXXV of 1860	The whole Act.
Act XXII. of 1861	Sections 1, 2, 3, 4, and 5.
BENGAL.	
Regulation IX. of 1793	Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 23, 26, 27, 29. 47, 48, 49, 50, 51, 53, 54, 56, 57, 58, 61, 64, 65, 74, 75, 77, and 78
Regulation XIII. of 1793	Sections 9 and 11.
Regulation XXII. of 1793... ...	Sections 10, 16, 22, 31, 32, 33, 34, and 38.
Regulation VII. of 1794	The whole Regulation.
Regulation XVI. of 1795	Section 4, Clause 1, in so far as it extends the provisions of Regulation IX. of 1793, which are repealed by this Act, and Clauses 2, 4, and 5, and the following Sections of the Regulation.
Regulation XVII. of 1795... ...	Sections 10, 20, 29, 30, 31, 32, and 35.
Regulation XXI. of 1795	The whole Regulation.
Regulation II. of 1796	The whole Regulation.
Regulation IX. of 1796	The whole Regulation.
Regulation XI. of 1796	The whole Regulation.
Regulation II. of 1797	Section 3.
Regulation IV. of 1797	The whole Regulation.
Regulation XIII. of 1797	The whole Regulation.
Regulation XIV. of 1797	The whole Regulation.
Regulation III. of 1798	The whole Regulation.
Regulation II. of 1799	The whole Regulation.
Regulation IV. of 1799	The whole Regulation.
Regulation VIII. of 1799	The whole Regulation.
Regulation X. of 1799	The whole Regulation.
Regulation III. of 1801	The whole Regulation.
Regulation VIII. of 1801	The whole Regulation.
Regulation VI. of 1802	The whole Regulation.
Regulation VI. of 1803	The whole Regulation, with exception to Sections 3 and 34.
Regulation VII. of 1803	From Section 5 to Section 41, both inclusive.
Regulation VIII. of 1803	The whole Regulation, with exception to Sections 6, 24, and 26.
Regulation XII. of 1803	Sections 12 and 14.
Regulation XX. of 1803	The whole Regulation.
Regulation XXXV. of 1803 ...	Section 3, Clauses 3, 4, and 5, and Section 10.
Regulation L. of 1803 ...	The whole Regulation.
Regulation LIII. of 1803 ...	The whole Regulation.
Regulation III. of 1804 ...	The whole Regulation.
Regulation IV. of 1804 ...	Proviso in Section 7.
Regulation IX of 1804	So much of the Regulation as extends the whole or any part of Regulations VI., VII., VIII., XX., XXXV., and LIII. of 1803, which are repealed by this Act, to the Districts mentioned in Sections 3 and 4, Sections 5 and 6, and the proviso in Section 11.

SCHEDULE OF REGULATIONS AND ACTS REPEALED.

Reference to Regulation or Act.	Extent of Repeal.
Regulation III of 1805	The whole Regulation.
Regulation VII of 1805	Section 14.
Regulation I. of 1806	Sections 6, 7, 8, and 9.
Regulation XII. of 1806	Section 3, in so far as it extends the parts of Regulation IX of 1804 and Regulation VIII. of 1805, and the other Regulations therein referred to, which are repealed by this Act.
Regulation XV of 1806	The whole Regulation.
Regulation II. of 1807	The whole Regulation.
Regulation IX. of 1807	The whole Regulation.
Regulation XIV. of 1807	Section 11, Clauses 7, 8, 9, 10, 11, and 12, Section 20, and Section 21.
Regulation VIII. of 1808	The whole Regulation.
Regulation I. of 1810	The whole Regulation.
Regulation VI. of 1810	Sections 3, 4, and 5.
Regulation XIV. of 1810	The whole Regulation.
Regulation I. of 1811	The whole Regulation, except so much of Section 10 as declares landholders and others accountable for the early communication to the Magistrate of information respecting receivers of stolen goods.
Regulation VII. of 1811	The whole Regulation.
Regulation X. of 1811	Section 3.
Regulation XIV. of 1811	The whole Regulation.
Regulation III. of 1812	Sections 2 and 3, so much of Section 4 as provides a punishment for the offence mentioned in the Section, Section 6, and Section 12.
Regulation VII. of 1813	Section 3.
Regulation IX. of 1813	The whole Regulation.
Regulation VIII. of 1814	So much of Section 2 as provides a punishment for the offence mentioned in the Section.
Regulation XI. of 1814	The whole Regulation.
Regulation XV. of 1814	The whole Regulation.
Regulation XIV. of 1816 ...	Sections 9 and 15.
Regulation XVII. of 1816 ..	Section 8, Clauses 3 and 4.
Regulation XVII. of 1817... ...	The whole Regulation.
Regulation XX. of 1817	Clauses 3 and 4 of Section 6, Clauses 5, 6, and 7 of Section 8, Sections 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, and 26.
Regulation VI. of 1818	The whole Regulation.
Regulation VIII. of 1818	The whole Regulation.
Regulation XII. of 1818	The whole Regulation.
Regulation III of 1819	The whole Regulation.
Regulation VII. of 1819	The whole Regulation.
Regulation IV. of 1820	The whole Regulation.
Regulation VII. of 1820	The whole Regulation.
Regulation III. of 1821	The whole Regulation.
Regulation I. of 1822	The whole Regulation.
Regulation IV. of 1822	The whole Regulation.
Regulation VIII. of 1822	The whole Regulation.

SCHEDULE OF REGULATIONS AND ACTS REPEALED.

Reference to Regulation or Act.	Extent of Repeal.
Regulation II. of 1823	The whole Regulation.
Regulation IV. of 1823	The whole Regulation.
Regulation VI. of 1824	The whole Regulation.
Regulation X. of 1824	The whole Regulation.
Regulation I of 1825	The whole Regulation.
Regulation IV of 1825	The whole Regulation.
Regulation XII. of 1825	The whole Regulation.
Regulation XVI. of 1825	The whole Regulation.
Regulation I. of 1828	The whole Regulation.
Regulation VI. of 1828	The whole Regulation.
Regulation VIII. of 1828	The whole Regulation.
Regulation VI. of 1829	The whole Regulation.
Regulation VII. of 1829	The whole Regulation.
Regulation XII. of 1829	The whole Regulation.
Regulation XVII. of 1829	Sections 4 and 5.
Regulation IV. of 1830	The whole Regulation.
Regulation VIII. 1830	The whole Regulation.
Regulation VI. of 1831	Sections 12 and 13.
Regulation VII. of 1831	Sections 5 and 6, and so much of Section 7 as relates to Session Judges.
Regulation IX. of 1831	Sections 3 and 4.
Regulation II. of 1832	Sections 2 and 3.
Regulation III. of 1832	Clause 2 of Section 2.
Regulation VI. of 1832	Sections 4, 5, and 6.
Regulation II. of 1834	The whole Regulation, except Section 7.
MADRAS.	
Regulation III. of 1802	Section 8.
Regulation IV. of 1802	Section 20.
Regulation VII. of 1802	The whole Regulation
Regulation VIII. of 1802	Sections 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 23, 24, and 25.
Regulation XI. of 1802	Section 8.
Regulation XII. of 1802	Sections 12, 13, and 14.
Regulation XV. of 1803	The whole Regulation.
Regulation I. of 1810	The whole Regulation.
Regulation VI. of 1811	The whole Regulation.
Regulation VI. of 1816	Section 49.
Regulation IX. of 1816	The whole Regulation, except Sections 2, 3, 4, 5, and 43, and Nos. 1 and 2 of Appendix.
Regulation X. of 1816	The whole Regulation, except Section 40 and Appendix.
Regulation XI. of 1816	*The whole Regulation, except Sections 8,
Regulation III. of 1817	9, 10, 12, 13, 14, and 47. Section 2.
Regulation I. of 1818	The whole Regulation.
Regulation III. of 1819	The whole Regulation.
Regulation V. of 1819	The whole Regulation.
Regulation IV. of 1821	The whole Regulation, except Section 6.
Regulation II. of 1822	The whole Regulation.
Regulation VI of 1822	The whole Regulation.

* As amended by Act XXXVI. 1867, except Ss. 8, 9, 10, 11, Clauses 1, 13, 14, 47.

SCHEDULE OF REGULATIONS AND ACTS REPEALED.

Reference to Regulation or Act.	Extent of Repeal.
Regulation I. of 1824	The whole Regulation.
Regulation I. of 1825	The whole Regulation.
Regulation III. of 1826	The whole Regulation.
Regulation II. of 1827	Section 3.
Regulation III. of 1827	The whole Regulation.
Regulation VI. of 1827	The whole Regulation
Regulation VIII. of 1827	So much of Section 4 as provides for Native Judges being guided by Regulation X. 1816, Sections 5, 7, 8, 10, 11, 12, 13, and Clauses 3 and 4 of Section 14.
Regulation X. of 1827	The whole Regulation.
Regulation VIII. of 1828	The whole Regulation.
Regulation IX. of 1828	The whole Regulation.
Regulation VI. of 1829	The whole Regulation.
Regulation VIII. of 1829	The whole Regulation.
Regulation II. of 1830	The whole Regulation.
Regulation II. of 1831	The whole Regulation.
Regulation III. of 1831	The whole Regulation.
Regulation VIII. of 1831	Section 5.
Regulation VIII. of 1832	The whole Regulation.
Regulation IX. of 1832	The whole Regulation.
Regulation XIII of 1832	The whole Regulation.
Regulation II. of 1833	The whole Regulation.
Regulation III. of 1833	Section 2.
Regulation I. of 1834	The whole Regulation.
BOMBAY.	
Regulation II. of 1827	Section 36.
Regulation IV. of 1827	Clause 4, Section 34, also Section 52, and Sections 54 and 55.
Regulation XI. of 1827	The whole Regulation.
Regulation XII. of 1827	The whole Regulation, with the following exceptions: Section 1, in as far it applies to the Zillah Magistrate; Clause 1 of Section 3, in as far as it relates to the Police functions of the Zillah Magistrate; Clause 2 of Section 3; Clause 5 of the same Section, in as far as it extends to the Zillah Magistrate; Section 4, in as far as it extends to Assistant Collectors in charge; Section 6; Clause 4 of Section 10; Clause 1 of Section 13, in as far as it regulates the endorsement and record of warrants issued by Magistrates; Clauses 1, 6, 7, and 8 of Section 19; Section 20; Clause 1 of Section 22, in as far as it relates to the superintendence of Village Police; Clause 2 of Section 27; Section 30; Clause 4 of Section 31; Sections 37 and 40; and Chapter IV.
Regulation XIII. of 1827	Sections 4, 5, 6, 10, 11, 12, and 13; Chapters III. and IV.; Sections 29 and 30; Clauses 1 and 2, Section 31, Clause 3 of Section 33, and the whole of Chapter VI.

SCHEDULE OF REGULATIONS AND ACTS REPEALED.

Reference to Regulation or Act.	Extent of Repeal.
	except Clause 3 of Section 34, in as far as it authorizes the occasional substitution of a letter for a summons, and except Clause 9 of the same Section, Clause 2 of Section 36, and Clauses 1 and 2 of Section 43.
Regulation XIV. of 1827	The whole Regulation, except Clause 2 of Section 3, and Sections 20 and 23.
Regulation XV. of 1827	The whole Regulation.
Regulation XXIII. of 1827 ...	The whole Regulation.
Regulation XXX. of 1827 ...	The whole Regulation.
Regulation XVII. of 1828 ...	The whole Regulation.
Regulation III. of 1830	The whole Regulation, except Sections 2, 4, 6, and 7.
Regulation IV. of 1830	The whole Regulation, except Clause 1 of Section 1, and Section 2.
Regulation XVI. of 1830	The whole Regulation.
Regulation XIX. of 1830	The whole Regulation.
Regulation V. of 1831	The whole Regulation.
Regulation VIII. of 1831	The whole Regulation, except Section 1.
Regulation IX. of 1831	The whole Regulation.
Regulation III. of 1833	The whole Regulation.
Regulation VII. of 1833	The whole Regulation.
Regulation VIII. of 1833	The whole Regulation.

ACT No. VI. OF 1864.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 18th February 1864).

An Act to authorize the punishment of whipping in certain cases.

Preamble.

WHEREAS it is expedient that in certain cases offenders should be liable, under the provisions of the Indian Penal Code, to the punishment of whipping; It is enacted as follows:—

Whipping added to the punishments described in Section 53 of the Penal Code.

I. In addition to the punishments described in Section 53 of the Indian Penal Code, offenders are also liable to whipping under the provisions of the said Code.

Offences punishable with whipping in lieu of other punishment prescribed by Penal Code.

II. Whoever commits any of the following offences, may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the Indian Penal Code; that is to say:—

1. Theft, as defined in Section 378 of the said Code.

2. Theft in a building, tent, or vessel, as defined in Section 380 of the said Code.

3. Theft by a clerk or servant, as defined in Section 381 of the said Code.

4. Theft after preparation for causing death or hurt, as defined in Section 382 of the said Code.

5. Extortion by threat, as defined in Section 388 of the said Code.

6. Putting a person in fear of accusation in order to commit extortion, as defined in Section 389 of the said Code.

7. Dishonestly receiving stolen property, as defined in Section 411 of the said Code.

8. Dishonestly receiving property stolen in the commission of a Dacoity, as defined in Section 412 of the said Code.

9. Lurking house-trespass, or house-breaking, as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

10. Lurking house-trespass by night or house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

No female shall be punished with whipping.—S. 7.

All sentences of whipping are appealable in the manner prescribed in Ss. 408, 409, 412 of the Code of Criminal Procedure. If, however, no other punishment has been awarded, the sentence should be carried into execution without delay. The effect of the appeal will be to ascertain the correctness of the sentence already carried out, and not to bring under review the sentence itself with a view to its revision.—Calcutta High Court, 314, 1864.

Abetments of the offences mentioned in S. 2 may generally be punished with whipping, as the Indian Penal Code, in providing the punishment for nearly every case of abetment, declares that the punishment for the substantive offence shall be awarded.—See Ss. 109, 110, 111, 112, and 114. Attempts to commit any of these offences are not punishable with whipping.

On second conviction of any offence mentioned in last Section, whipping may be added to other punishment.

III. Whoever, having been previously convicted of any one of the offences specified in the last preceding Section, shall again be convicted of the same offence, may be punished with whipping in lieu of, or in addition to, any other punishment to which he may for such offence be liable under the Indian Penal Code.

In passing sentences of whipping, the provisions of S. 7 of this Act should be borne in mind.

The Calcutta High Court has held that a sentence of imprisonment and whipping passed on a person convicted of "theft," and who had been previously convicted of "receiving stolen property," was illegal, as the convictions in both cases should have been for the same offence.—Amarut Shaikh, Oct. 28, 1865.

Both convictions must have been under the Indian Penal Code, consequently, if the first offence was committed before 1st January 1862, that is, before that Code became law in the Presidency of Bengal, the offender would not, by reason of a second conviction of that offence, be liable to whipping.—*Ibid* 425, 1864.

In connection with S. 3 read S. 9, the effect of which is to defer the immediate execution of sentences of whipping, when such are passed *in addition to* imprisonment: for, as ruled by the Calcutta High Court (Cir. 2, 1864), all sentences of whipping are appealable in the manner prescribed in Ss. 408, 409, 412 of the Code of Criminal Procedure.

As regards the passing of sentences of whipping on persons convicted of abetments of, or attempts to, commit offences punishable with whipping, see note to S. 2.

IV. Whoever, having been previously convicted of any one of the following offences, shall be again convicted of the same offence, may be punished with whipping in addition to any other punishment to which he may be liable under the Indian Penal Code; that is to say:—

Offences punishable, in case of second conviction, with whipping in addition to other punishment.

1. Giving or fabricating false evidence in such manner as to be punishable under Section 193 of the Indian Penal Code.

2. Giving or fabricating false evidence with intent to procure conviction of a capital offence, as defined in Section 194 of the said Code.

3. Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment, as defined in Section 195 of the said Code.

4. Falsely charging any person with having committed an unnatural offence, as defined in Sections 211 and 377 of the said Code.

5. Assaulting or using criminal force to any woman with intent to outrage her modesty, as defined in Section 354 of the said Code.

6. Rape, as defined in Section 375 of the said Code.

7. Unnatural offences, as defined in Section 377 of the said Code.

8. Robbery or Dacoity, as defined in Sections 390 and 391 of the said Code.

9. Attempting to commit Robbery, as defined in Section 393 of the said Code.

10. Voluntarily causing hurt in committing Robbery, as defined in Section 394 of the said Code.

11. Habitually receiving or dealing in stolen property, as defined in Section 413 of the said Code.

12. Forgery, as defined in Section 463 of the said Code.

13. Forgery of a document, as defined in Section 466 of the said Code.

14. Forgery of a document, as defined in Section 467 of the said Code.

15. Forgery for the purpose of cheating, as defined in Section 468 of the said Code.

16. Forgery for the purpose of harming the reputation of any person, as defined in Section 469 of the said Code.

17. Lurking house-trespass or house-breaking, as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

18. Lurking house-trespass by night or house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

In passing sentences of whipping, the provisions of S. 7 of this Act should be borne in mind.

See note to S. 3, regarding the application of S. 9 to sentences of whipping passed *in addition to* imprisonment.

See note to S. 2, regarding the passing of sentences of whipping on persons convicted of abetments of, or attempt to, commit offences punishable with whipping.

V. Any juvenile offender who commits any offence, which is not by the Indian Penal Code punishable with death, may, whether for a first or any other offence, be punished with whipping in lieu of any other punishment to which he may for such offence be liable under the said Code.

Juvenile offenders punishable with whipping for offences not punishable with death.

See note to S. 2, regarding the right to appeal against sentences of whipping.

Following S. 83 of the Indian Penal Code, the Agra Sudder Court have held that "juveniles" are persons under 16 years of age.—May 7, Sept. 24, 1864.

A juvenile offender cannot, under S. 5, be punished with whipping *and* imprisonment. —Calcutta High Court, Abdool, July 5, 1864.

When offences specified in Section 4 may be punished with whipping in Frontier Districts and wild tracts.

VI. Whenever any Local Government shall, by notification in the *Official Gazette*, have declared the provisions of this Section to be in force in any Frontier District or any wild tract of country within the jurisdiction of such Local Government, any person who shall in such district or tract of country, after such notification as aforesaid, commit any of the offences specified in Section 4 of this Act, may be punished with whipping in lieu of any other punishment to which he may be liable under the Indian Penal Code.

Exemption of females.

VII. No female shall be punished with whipping; nor shall any person who may be sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years, be punished with whipping.

Officers inferior to Subordinate Magistrate of the first class not to pass sentence of whipping, unless expressly empowered by Government.

VIII. No sentence of whipping shall be passed by any Officer inferior to a Subordinate Magistrate of the 1st class, unless he shall have been expressly empowered by the Local Government to pass sentences of whipping.

Whipping, if awarded in addition to imprisonment, when to be inflicted.

IX. When the punishment of whipping is awarded in addition to imprisonment, by a Court whose sentence is open to revision by a superior Court, the whipping shall not be inflicted until fifteen days from the date of such sentence, or if an appeal be made within that time, until the sentence is confirmed by the superior Court: but the whipping shall be inflicted immediately on the expiry of the fifteen days, or, in case of an appeal, immediately on the receipt of the order of the Court confirming the sentence, if such order shall not be received within the fifteen days.

All sentences of whipping are appealable in the manner prescribed in Ss. 408, 409, 412 of the Code of Criminal Procedure (Calcutta High Court, Cir. 2, 1864); but, if the whipping be awarded in lieu of any other punishment, the sentence should be carried into execution without delay. The effect of the appeal will be to ascertain the correctness of a sentence already carried out, and not to bring under review the sentence itself with a view to its revision.—*Ibid* 314, 1864.

Mode of inflicting the punishment.

X. In the case of an adult, the punishment of whipping shall be inflicted with such instrument in such mode and on such part of the person as the Local Government shall direct; and, in the case of a juvenile offender, it shall be inflicted in the way of school discipline with a light rattan. In no case, if the cat-of-nine-tails be the instrument employed, shall the punishment of whipping exceed one hundred and fifty lashes, or if the rattan be employed, shall the punishment exceed thirty stripes. The punishment shall be inflicted in the presence of a Justice of the Peace, or of an Officer authorized to exercise any of the powers of a Magistrate, and also, unless the Court which passed the sentence shall otherwise order, in the presence of a Medical Officer.

The Lieutenant-Governor of Bengal has directed that, in the case of an adult, the whipping shall be inflicted on the breech with a rattan not more than half an inch in diameter.—Government Order No. 1690, dated 15th March 1864.

Punishment not to be inflicted if offender not in fit state of health.

XI. No sentence of whipping shall be carried into execution unless a Medical Officer, if present, certifies, or unless it appears to the Justice of the Peace or other Officer present, that the offender is in a fit state of health to undergo the punishment; and if during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Officer present, that the offender is not in a fit state of health to undergo the remainder of the punishment, execution shall be stayed. No sentence of whipping shall be executed by instalments.

Nor by instalments.

The Governor-General of India in Council has notified that he considers that the precaution of having a Medical Officer present at the time of the infliction of the punishment should be observed in every instance when practicable.

Procedure if punishment cannot be inflicted under the last Section.

XII. In any case in which, under the last preceding Section of this Act, no part of a sentence of whipping is carried into execution, the offender shall be kept in custody till the Court which passed the sentence can revise it, and the said Court may, at its discretion, either order the discharge of the offender, or sentence him in lieu of whipping to imprisonment for any period, which may be in addition to any other punishment to which he may have been sentenced for the same offence; provided that the whole period of imprisonment shall not exceed that to which the offender is liable under the provisions of the Indian Penal Code, or that which the said Court is competent to award.

ACT NO. XXVIII. OF 1867.

EXTENDED TO THE CENTRAL PROVINCES BY NOTIFICATION OF GOVERNMENT OF INDIA.—GAZETTE OF 1868, P. 27.

An Act to remove doubts as to the legality of certain sentences passed by tribunals, called Petty Sessions Courts, in the North-Western Provinces.

Preamble.

WHEREAS certain Magistrates in the North-Western Provinces of the Presidency of Fort William in Bengal have been used to sit together in certain places in the said Provinces as a Court of Petty Sessions, and to pass sentences in that capacity: And whereas doubts have been raised as to the legality of such proceedings and sentences, and it is expedient to remove such doubts; It is hereby enacted as follows:—

Validity given to process, &c., signed by Magistrates in Petty Sessions.

1. When two or more persons authorized to exercise all or any of the powers of a Magistrate sit together for the despatch of business in any place in the said Provinces, any summons, warrant or process, or other proceeding, and any order, judgment, finding or sentence, signed by any two or more of them, shall be as valid to all intents and purposes as if it were solely signed, when the powers of one or more of them are higher

than the powers of the others or other of them, by such one of them as has, or by one of such of them as have, been invested under Section 23 of the Code of Criminal Procedure, with the highest of such powers, or when the powers are equal, by any one of them.

Sentences heretofore passed by Magistrates in Petty Sessions, to be valid.

2. All sentences heretofore passed by any Magistrates sitting together in any such place as aforesaid, shall be deemed to be as valid as if this Act had then been passed.

High Court may frame rules.

3. It shall be lawful for the High Court of Judicature for the said Provinces to frame rules consistent with this Act and with the Code of Criminal Procedure, for the conduct of business transacted by Magistrates sitting together in manner aforesaid, and from time to time to repeal, alter, and add to such rules. All such rules, and all repeals and alterations thereof, and additions thereto, shall be published in the local *Gazette*.

The Judicial Commissioner, Central Provinces, has been vested with the powers of a High Court, under S. 3.—*Gazette of India*, 1868, p. 27.

Act may be extended.

4. It shall be lawful for any Local Government, other than the Government of the North-Western Provinces, to extend, *mutatis mutandis*, the provisions of this Act to all or any part of the territories under its Government.

ACT No. II OF 1855.

An Act for the further improvement of the Law of Evidence.

Preamble.

WHEREAS it is expedient further to improve the Law of Evidence, it is enacted as follows:—

Act repealed.

I. Act No. X. of 1835 is hereby repealed.

Judicial notice to be taken of all Acts and Regulations.

II. Within the territories in the possession and under the Government of the East India Company, all Courts of Justice, and all persons having by law or consent of parties authority to take evidence shall take judicial notice of all Regulations and Ordinances made before or on the 22nd day of April 1834 by the Governor-General in Council of the Presidency of Fort William in Bengal, by the Governor in Council of the Presidency of Fort St. George, or by the Governor in Council of the Presidency of Bombay, and having the force of Law in any part of the said territories, and of all Laws and Regulations heretofore made by the Governor-General of India in Council, and of this Act, and of all Acts and Regulations heretofore made, or hereafter to be made, by the Governor-General of India in Council, constituted for the purpose of making Laws and Regulations, whether the same be of a public or of a private nature.

Judicial notice to be taken of public Acts of Parliament.

What shall be prima facie proof of a private Act.

III. All Courts and persons aforesaid shall take judicial notice of all public Acts of Parliament and of all local and personal Acts declared by Parliament to be public and to be judicially noticed, and shall admit as *primâ facie* evidence of any private Act of Parliament, any copy thereof purporting to be printed by the King's Printer.

Judicial notice to be taken by Court of its own Officers, &c.

IV. Every Court shall take judicial notice of its own Members and Officers respectively, and of their deputies and subordinate Officers or Assistants, and also of all Officers acting in execution of its process, and of all Advocates, Attorneys, Proctors, Vakeels, Pleaders, and other persons authorized by Law to act before it.

Judicial notice to be taken of the names, titles, &c., of certain persons.

V. All Courts and persons aforesaid shall take judicial notice of the names, titles, and authorities of the persons filling for the time being any one of the following offices in any part of the said territories:—Governor-General, Governor, Lieutenant-Governor or Deputy Governor, Secretay or Under-Secretary to Government, Commander-in-Chief, Bishop, Member of Council, Legislative Councillor, Judge of any of Her Majesty's Courts or of any Sudder Court, or of any Court of Judicature hereafter to be constituted in the said territories, to or in which the powers of any of Her Majesty's Supreme Courts may be transferred or vested.

Judicial notice to be taken of divisions of time, place, &c.

VI. All such Courts and persons aforesaid shall take judicial notice of all divisions of time, of the geographical divisions of the world, of the territories under the dominion of the British Crown, of the commencement, continuation, and termination of hostilities between the British Crown and any other State, and also of the existence, title, and national flag of every Sovereign or State recognized by the British Crown. In all the above cases, such Court or person may resort for its aid to appropriate books or documents of reference.

Proof of Government Gazette.

VII. Any *Government Gazette* of any Country, Colony, or Dependency under the dominion of the British Crown, may be proved by the bare production thereof before any of the Courts or persons aforesaid.

Proof of Proclamation, Acts of State, &c.

Proclamations, &c., when to be prima facie proof of fact.

VIII. All proclamations, Acts of State, whether Legislative or Executive, nominations, appointments, and other official communications of the Government appearing in any such *Gazette*, may be proved by the production of such *Gazette*, and shall be *primâ facie* proof of any fact of a public nature which they were intended to notify.

Recital in Act of a fact of a public nature to be prima facie proof.

IX. Any recital contained in any Act of the Governor-General of India in Council, constituted for the purpose of making Laws and Regulations hereafter to be passed of any fact of a public nature, shall be deemed, before all such Courts and persons, to be *primâ facie* evidence of the truth of the fact recited.

Gazette, &c., containing advertisement purporting to be published by authority, to be prima facie evidence of such authority.

X. The *Gazette* or Newspaper containing any advertisement purporting to be published by virtue of any public Statute, Act, Regulation, or Ordinance, or of any Rule or Order of a Court of Justice, or of any Board or Officer of Revenue, may be received by any such Courts or persons as aforesaid as *primâ facie* evidence that such advertisement was published duly under the authority from which it purports to proceed.

XI. All Courts and persons aforesaid may, on matters of public History, Literature, Science, or Art, refer, for the purposes of evidence, to such published Books, Maps, or Charts as such Courts or persons shall consider to be of authority on the subject to which they relate.

Books, Maps, &c., to be evidence in matters of public history, &c.

XII. Books printed or published under the authority of the Government of a Foreign Country, and purporting to contain the Statutes, Code, or other written Law of such Country, and also printed and published Books of Reports of decisions of the Courts of such Country, and Books proved to be commonly admitted in such Courts as evidence of the law of such Country, shall be admissible before any such Courts or persons as aforesaid as evidence of the Law of such Foreign Country.

What Books, &c., shall be evidence of Foreign Law.

XIII. All Maps made under the authority of Government or of any public Municipal body, and not made for the purpose of any litigated question, shall *primâ facie* be deemed to be correct, and shall be admitted in evidence without further proof.

Government or public Maps when to be prima facie proof.

Persons incompetent to testify.

XIV. The following persons only shall be incompetent to testify :—

1. Children under seven years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.

Children.

2. Persons of unsound mind, who, at the time of their examination, appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly; and no person who is known to be of unsound mind shall be liable to be summoned as a witness, without the consent previously obtained of the Court or person before whom his attendance is required.

Insane persons.

Not to be summoned without leave of Court.

XV. Any person who, by reason of immature age or want of religious belief, or who by reason of defect of religious belief, ought not, in the opinion of such Court or person, to be admitted to give evidence on oath or solemn affirmation, shall be admitted to give evidence on a simple affirmation, declaring that he will speak the truth, the whole truth, and nothing but the truth.

Children and persons of defective religious belief to testify on simple affirmation.

XVI. The provisions in the last preceding Section as to witnesses shall apply to testimony given by affidavit or otherwise in writing, as well as to testimony orally delivered.

Provisions as to witness to apply to affidavits, &c.

XVII. Any such witness wilfully giving false evidence shall be subject to be proceeded against in like manner, and to suffer, if convicted, the same punishment as if he had been sworn and had committed wilful and corrupt perjury. The indictment or charge shall be varied so as to meet the case.

Punishment for giving false evidence.

The Indian Penal Code (Act XLV. of 1860, S. 193 *et seq.*) contains the law for the punishment of persons intentionally giving false evidence.

XVIII. No person shall, by reason of any interest in the result of any suit, or of an interest connected therewith, or by reason of relationship to any of the parties thereto, be incompetent to give evidence in such suit.

No incompetency from interest in suit.

Similarly, by Act XIX. of 1837, it is enacted that "no person shall, by reason of any conviction for any offence whatever, be incompetent to be a witness in any stage of any cause, Civil or Criminal, before any Court in the territories of the East India Company."

A prisoner cited by another to give evidence in his behalf in the same trial has been declared to be incompetent, on the ground of his having a direct interest in procuring an acquittal.—Ashruff Sheikh, 6 W R., 91.

XIX. Any party to a Civil suit or other proceeding of a Civil nature shall be competent, and may be compelled, to give evidence as a witness therein, either on his own behalf or on behalf of any other party to the suit or proceeding, and also to produce any document in his possession or power, in the same manner as if he were not a party to the suit or proceeding. Provided that no Court or person as aforesaid, other than Her Majesty's Supreme Courts of Judicature, shall compel the attendance of any party to such suit or proceeding, for the purpose of giving evidence therein, except under and subject to the rules prescribed in that behalf in Act XIX. of 1853.

Party to suit may be examined as a witness.

Proviso.

Act X. of 1861 has repealed the whole of Act XIX. of 1853 except Ss. 19 and 26. Act X. of 1855, Ss. 9 and 10, contain similar rules for the Presidencies of Madras and Bombay.

In a Criminal case the complainant is examined as a witness (S. 43, p. 17, *ante*), and an accused person may be examined (Ss. 202 and 373), but not on oath or affirmation (S. 204, p. 97), it being within his option to answer any questions put to him.

XX. A husband or wife shall in every Civil proceeding be competent to give evidence for or against each other. Provided that any communication made by husband or wife to the other during their marriage shall be deemed a privileged communication and shall not be disclosed without the consent of the person making the same, unless such communication shall relate to a matter in dispute in a suit pending between such husband and wife.

Husband or wife giving evidence.

Proviso.

The Calcutta High Court has held that, upon a trial in the Mofussil (*i. e.*, not within the Original Jurisdiction of the Court) of a person charged with an offence, his wife is competent to give evidence for or against him, as well as for or against any persons charged jointly with him.—Reg. *vs.* Khyroollah, 6 W. R., 21.

XXI. A witness, whether a party or not, shall not be bound to produce any document relating to affairs of State, the production of which would be contrary to good policy, nor any document held by him for any other person who would not be bound to produce it if in his own possession.

Witness, &c, not bound to produce document relating to State affairs.

XXII. A witness being a party to the suit shall not be bound to produce any document in his possession or power which is not relevant or material to the case of the party requiring its production, nor any confidential writing or correspondence which may have passed between him and any legal professional adviser. If any party, however, offer himself as a witness, he shall be bound to produce any such writing or correspondence in his custody, possession, or power, if relevant or material to the case of the party requiring its production.

Party to suit not bound to produce certain documents.

Unless he offers himself as a witness.

XXIII. Every witness summoned to produce a document shall, if the same be in his custody, possession, or power, be bound to bring it or cause it to be brought into Court, although there be a valid objection to the right of the party calling for it to compel its production, or to the reading or putting it in as evidence, or to the disclosure of the contents thereof, the validity of any such objection made by the person producing the document shall be determined by the Court; and for the better determination thereof, it shall be lawful for the Court to receive any admissible evidence, which the person producing the document may give respecting it, and it shall also be lawful for the Court, except in the case of any document relating to affairs of State, to inspect the document, and, if necessary, to call to its assistance any person whom it may appoint to interpret the same. Such person, however, shall be previously sworn truly to interpret the same to the Court alone, and not to disclose the contents thereof except to the Court, unless the Court shall order the document to be given in evidence.

Witness summoned to produce a document must bring it into Court
Mode of determining objection to production.

Document relating to affairs of State.

XXIV. A Barrister, Attorney, or Vakeel, shall not, without the consent of his client, disclose any communication made by the client to him in the course of his professional employment, nor any advice given by him professionally to his client, nor the contents of any document of his client, the knowledge of which he shall have acquired in the course of his professional employment. The privilege, however, is that of the client, and if any party to a suit shall give evidence therein, at his own instance, he shall be deemed thereby to have waived his privilege, and to have consented to the disclosure by such Barrister, Attorney, or Vakeel, of any matter as aforesaid, which may be relevant, and which the Barrister, Attorney, or Vakeel, would have been bound to disclose, but for the privilege of his client, and the Barrister, Attorney, or Vakeel, shall be bound upon examination to disclose any such matter.

Professional communications

XXV. Any person present in Court, whether a party or not, may be called upon and compelled by the Court to give evidence, and produce any document then and there in his actual possession, or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence, or to produce such document, and may be punished in like manner for any refusal to obey the order of the Court.

Persons present in Court to give evidence, &c, though not summoned.

As regards Civil suits or proceedings, this Section has been repealed by Act X. of 1861, having been previously re-enacted by S. 171, Act VIII. of 1859.

A Magistrate may examine as a witness any person in attendance, although not summoned as a witness (S. 263, Code of Criminal Procedure); and a similar power is also given to a Sessions Judge (S. 367); but it is to be observed that S. 263 relates only to trials concerning petty offences under Chapter XV., and no similar provision is contained in Chapters XII. and XIV. S. 25 Act II. of 1855 would, however, cover such cases.

XXVI. Any person, whether a party to the suit or not, may be summoned to produce a document without being summoned to give evidence, and any person summoned merely to produce a document, shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same.

Persons summoned to produce a document not bound to attend personally.

Repealed by Act X. of 1861, having been previously re-enacted in S. 153 Act VIII. of 1859.

Rules of Evidence in Supreme Courts on Ecclesiastical and Admiralty sides.

XXVII. The Rules of Evidence in Her Majesty's Supreme Courts as to matters of Ecclesiastical or Admiralty Civil Jurisdiction, shall be the same as they are on the Plea side of the said Courts.

Evidence of one witness sufficient proof.

Proviso.

XXVIII. Except in cases of treason, the direct evidence of one witness, who is entitled to full credit, shall be sufficient for proof of any fact in any such Court or before any such person. But this provision shall not affect any rule or practice of any Court that requires corroborative evidence in support of the testimony of an accomplice or of a single witness in the case of perjury.

In the case of Lall Chand Kowrah (*5* W. R., 23), it was held that the words 'any such Court' in S. 28 did not refer to S. 27, but that read with the following words "or before any such person,"—they referred to "all Courts of Justice, and all persons having by law or consent of parties authority to take evidence" contained in S. 2. The High Court also found that as it was the rule in Mofussil as well as in Presidency Courts that the uncorroborated evidence of a single witness is not sufficient to convict a person of perjury, such a case would not fall within the general rule, but within the proviso of S. 28. In the case of Bakhowree Chowbey (*5* W. R., 98), a comparison of signature was held to be corroborative evidence sufficient to sustain a conviction of perjury. But where a witness has intentionally made two statements directly contradictory one of the other, and the Court finds that he has intentionally given false evidence, but is doubtful which statement is the false one, the finding may be in the alternative, as provided in Ss. 381 and 382, cl. *5* of the Code of Criminal Procedure.—Mussamut Zameerun, 6 W. R., 65.

As to the necessity for corroborative evidence in support of an accomplice, it has been held by the Calcutta High Court in the case of Elahie Buksh (*5* W. R., 80), that a conviction upon the uncorroborated testimony of an accomplice is legal. It was, however, held to amount to a misdirection on the part of a Sessions Judge to leave such evidence for the consideration of a Jury without warning them of the danger of convicting a prisoner solely on it.—See note to S. 31, *post.*

Dying declarations when admissible.

XXIX. Where dying declarations are evidence, they shall be received, if it be proved that the deceased was at the time of making the declaration, and then thought himself to be in danger of approaching death, though he entertained, at the time of making it, hope of recovery.

This Section has been somewhat modified by S. 371 of the Code of Criminal Procedure.—See note, p. 180, *ante.*

Party allowed to cross-examine and discredit his own witness.

XXX. The party at whose instance a witness is examined may, with the permission of such Court or person, cross-examine such witness, to test his veracity, in the same manner as if he had not been called at his instance, and may be allowed to show that the witness has varied from a previous statement made by him.

See S. 34, *post.*

Former statement admissible to corroborate a witness.

XXXI. In order to corroborate the testimony of a witness, any former statement made by such witness, relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact shall be admissible, and for that purpose a copy of any deposition or statement taken before any Court, Judge, Justice of the Peace, Magistrate, or person lawfully exercising the powers of a Magistrate, or before a Commissioner or Superintendent for the Suppression of Thuggee or Dacoity in the discharge of his duty, shall, if certified by such Court, Judge, or other Officer abovementioned, under his hand or the Official Seal of the Court, or under the hand

or Official Seal of such Judge, to be a true copy of such deposition or statement, without further proof, be received as *primâ facie* evidence that such deposition or statement was made, and that it was made at the time and place, and under the circumstances, if any, which shall be stated in the certificate or on the face of the deposition or statement.

As an illustration of S. 31, Sir Barnes Peacock, *C. J.*, in the case of Elahie Buksh, remarked that if two or three persons should be apprehended at different places, at long distances from each other, and should each confess and give a similar account, as other persons associated with them in a particular dacoity, the statement of each, if made under such circumstances as not to raise a presumption of collusion, might be proved in corroboration of his evidence, such statement being admissible as corroborative evidence under Act II. of 1855, S. 31.

Witness bound to answer crimination question.

XXXII. A witness shall not be excused from answering any question relevant to the matter at issue in any suit or in any Civil or Criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate such witness, or that it will expose, or tend directly or indirectly to expose such witness to a penalty or forfeiture of any kind. Provided that no such answer, which a witness shall be compelled to give, shall, except for the purpose of punishing such person for wilfully giving false evidence upon such examination, subject him to any arrest or prosecution, or be used as evidence against such witness in any Criminal proceeding.

Proviso.

Witness may be examined as to conviction for felony.

XXXIII. A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanor, and upon being so questioned, if he either denies the fact or refuses to answer, it shall be lawful for the opposite party to prove such conviction.

Cross-examination as to previous written statements

XXXIV. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject-matter of the cause, without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him. Provided always, that it shall be competent for the Judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he shall think fit.

Proviso.

Copy of a document made by a copying machine to be deemed correct.

XXXV. An impression of a document made by a copying-machine shall be taken without further proof to be a correct copy.

Such a document would be a "written" document, under the Code of Criminal Procedure.—(See S. 10).

Admission of secondary evidence where original document is out of the reach of process.

XXXVI. When an original document is out of the reach of the process of the Court, it shall be lawful for the Court, on application to it in any Civil suit or proceeding, and on notice to the opposite party at a reasonable time before the hearing, to make an order for the reception of secondary evidence of its execution and contents.

When attested document may be proved as if unattested.

XXXVII. An attested document may be proved as if unattested, unless it be a document to the validity of which attestation is requisite.

Admission prima facie proof of an attested document.

XXXVIII. The admission of a party to an attested instrument of its execution by himself shall be as against him sufficient *primâ facie* proof of such execution of it, though it be an instrument which is required by law to be attested.

Entry made against interest or in course of business when admissible in life-time of person making it.

XXXIX. Any entry or statement, which would be admissible in evidence after the death of the person who made it, on the ground of its having been made against the interest of the person making it, or on the ground of its having been made in the ordinary course of business, shall be admissible, though the person who made it be not dead, if he is incapable of giving evidence by reason of his subsequent loss of understanding, or is at the time of the trial or hearing *bonâ fide* and permanently beyond the reach of the process of the Court, or cannot, after diligent search, be found.

Entry in course of business when admissible for purpose of identification.

XL. Any entry in any books proved to have been regularly kept in the course of business, or in any public Office, so far as such entry merely refers to and tends to identify by name, description, number or otherwise, any Bank Notes or other Securities for the payment of money, or other property, and the payer in or receiver of them, shall, in any case, where such identification is necessary to be proved, be admissible in evidence for that limited purpose if it shall appear to have been made at or about the time of the transaction to which it relates, though the person who made it, or he on whose information it was made, is alive and capable of being produced as a witness.

Receipt when evidence against person other than the giver.

XLI. Any receipt in writing, acknowledging the receipt of any money, valuable securities of goods, shall, on proof of the execution thereof, be admissible in evidence before such Court or person aforesaid, not only against the party giving it, but also against any person in whose favor such receipt would operate as a discharge, or to whom it would render the person giving it liable for the money, security or goods acknowledged to have been received.

Receipt of agent.

XLII. Whenever a receipt would be admissible under the preceding Section, if given by a principal, a receipt given by an agent or servant of such principal, shall in like manner be evidence upon proof of the authority to give such receipt.

Books kept in course of business or in a public office admissible as corroborative evidence.

XLIII. Books proved to have been regularly kept in the course of business or in any public Office, shall be admissible as corroborative, but not as independent proof of the facts stated therein.

Documents admissible as corroborative evidence.

XLIV. The following documents may be admitted as corroborative evidence:—Certificates of shares, and of registration thereof, bills of lading, invoices, account sales, receipts usually given on the payment, deposit or delivery of money, goods, securities, or other things, provided they be proved to have been given in the ordinary course of business.

XLV. A witness shall be allowed before any such Court or person aforesaid to refresh his memory by any writing made by himself or by any other person at the time when the fact occurred, or immediately afterwards, or at any other time when the fact was fresh in his memory, and he knew that the same was correctly stated in the writing. In such case the writing shall be produced and may be seen by the adverse party, who may, if he choose, cross-examine the witness upon it.

Refreshing memory of witness.

Under this law the Calcutta High Court has allowed the notes taken by a Police Officer during an enquiry not an offence to be received. He should first be called upon to verify them, and then, by refreshing his memory, he can depose as to the facts entered therein. The notes or diary of a Police Officer will not become evidence, and should not be regarded as such.—4 W. R., 8 C. L.

XLVI. Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document, provided the Court or person, under the circumstances, be satisfied that there is sufficient reason for the non-production of the original.

Court may permit a copy of document to be used to refresh memory.

XLVII. In cases of pedigree, the declarations of illegitimate members of the family, and also of persons who, though not related by blood or marriage to the family, were intimately acquainted with its members and state, shall be admissible in evidence after the death of the declarant, in the same manner and to the same extent as those of deceased members of the family.

Declarations of illegitimate persons, &c., admissible in questions of pedigree.

XLVIII. On an enquiry, whether a signature, writing, or seal is genuine, any undisputed signature, writing, or seal of the party, whose signature, writing, or seal is under dispute, may be compared with the disputed one, though such signature, writing, or seal be on an instrument which is not evidence in the cause.

Comparison of handwriting, &c.

This Section is applicable to both Civil and Criminal cases.—Amanoollah Moolah, 6 W. R., 5.

XLIX. Any Power of Attorney, which has been executed at a place distant more than 100 miles from the place wherein the action, suit, or proceeding is depending, may be proved by the production of it, without further proof, where it purports, on the face of it, to have been executed before, and authenticated by a Notary Public or any Court, Judge, Consul, or Magistrate.

Proof of power of Attorney.

L. Whenever it is proved that a Letter Book is kept, and that, according to the usual course of business, letters are copied into such book and dispatched, and the Letter Book is produced, and it is proved that the letter was dispatched according to the usual practice, to the best of the knowledge and belief of the witness, having reasonable ground for forming that belief, the Court may presume the dispatch of that letter according to the usual course of business.

Proof of dispatch of letter by Letter Book.

LI. Any book proved to have been kept for marking the dispatch and receipt of letters, containing an entry of the dispatch of a letter, and an acknowledgment of the receipt of such letter, shall, on proof that such entry was made in the usual course of business, be *primâ facie* evidence of the receipt of such letter.

What to be prima facie proof of receipt of letter.

LII. So much of Section VI. of Act XV. of 1852, as provides that every such application as therein mentioned shall be made before issue joined in any such action, or twenty-one days before the trial or hearing of any other legal proceeding as therein mentioned, is hereby repealed.

Repeal of part of Section VI of Act XV. of 1852.

LIII. The provision contained in the 16th Section of Act VI. of 1854, that affidavits of particular witnesses, or affidavits as to particular facts or circumstances, may, by consent of the parties, or by leave of the Court obtained upon notice, be used in the hearing of any cause on the Equity side of the Supreme Courts, shall extend to all Civil actions, suits, and proceedings on all sides of the Courts.

Extension of Section XVI of Act VI. of 1854.

LIV. So much of the 17th Section of the same Act as provides that, upon the hearing of any motion, petition, or other proceeding in any of the said Supreme Courts, the Court may, upon the application of any of the parties thereto, or of its own accord, require and enforce the attendance and oral examination before itself of any witness or of any party to the suit, and may also require and enforce the production of any document or documents, and may direct the costs of the attendance and examination of such witness or party to be paid by such of the parties to the suit, or in such manner as it may think fit, shall extend to all Civil actions, suits, and proceedings on all sides of the said Court.

Extension of Section XVII of Act VI. of 1854.

LV. The 33rd Section of the Act No. VI. of 1824, which applies only to proof of accounts on the Equity side of the said Supreme Courts, shall extend to and embrace all accounts directed to be taken on any side of the said Courts.

Section XXXIII of Act VI. of 1854 extended.

LVI. Whenever, by any Statute or Act, Regulation or Ordinance now in force, or any Statute or Act to be hereafter in force, any certificate, certified copy, or other documents shall be receivable in evidence of any particular in any Court of Justice, the same, if it is substantially in the form, and purports to be executed in manner directed by the Statute, Act, Regulation, or Ordinance which makes it evidence, shall be *primâ facie* evidence, where it is rendered admissible, without proof of any seal, stamp, signature, character or authority, which it is directed to have, or from which it is directed to proceed.

Proof of official documents.

See Act VII. of 1854, S. 12, Appendix C, *post.*

LVII. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court, before which such objection is raised, that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

No new trial for rejection or improper reception of evidence.

Compare Ss 426 and 439, Code of Criminal Procedure.

LVIII. Nothing in this Act contained shall be so construed as to render inadmissible in any Court any evidence which, but for the passing of this Act, would have been admissible in such Court.

Act not to render inadmissible evidence now admitted in the Company's Courts.

APPENDIX B.

LAWS AND RULES OF PRACTICE RELATING TO TRIALS AND PRELIMINARY ENQUIRIES HELD BY MAGISTRATES AND JUSTICES OF THE PEACE IN CASES IN WHICH THE ACCUSED PERSON MAY BE A EUROPEAN BRITISH SUBJECT.

A European British subject, when charged with the commission of a criminal offence, can be tried only by the High Court of Judicature at Calcutta, Madras, or Bombay, or by the Chief Court in the Punjab (Act VI. of 1866), except in the cases provided for by 53 Geo. III. C. 155, S. 105, Act VII. of 1853, or Ss. 163 and 165 of the Code of Criminal Procedure, over which a Magistrate, who is a Justice of the Peace, has jurisdiction.—See Ss. 39 and 42 of the Code of Criminal Procedure.

33 Geo. III. C. 151, as modified by 47 Geo. III. C. 68, Ss. 5, 6, and 2 and 3 Wm. IV. C. 117, S. 1, are the laws for the nomination and appointment of a Justice of the Peace. Act XXVII. of 1860 prescribes the declaration to be subscribed by a person appointed as a Justice of the Peace. All these laws are quoted in a subsequent portion of this Appendix.

A European British subject has been defined to be "a person who was born in the United Kingdom of Great Britain or Ireland, or one who is the legitimate offspring of a father or grandfather there born."

But in the suit of Rouo *vs.* Smith and others, tried on November 29th, 1867, on the original side of the Calcutta High Court, Mr. Justice Markby delivered the following opinion on this point:—

"The plaintiff stated that he was born in the year 1848, that his great-grandfather was, according to the tradition of the family, a European residing at Madras, and his great-grandmother a Native Hindoo or Mahomedan. He did not know whether his great-grandfather and great-grandmother were married, or who his grandmother was, or whether his grandfather was married. His father married a Miss Clarke. The plaintiff himself and all his relations are Christians. He was born in Calcutta, and has no relatives in Europe that he is aware of. He does not know to what country in Europe his great-grandfather belonged.

Under these circumstances, I think I must presume that the plaintiff is the legitimate descendant of a European British subject.

Notwithstanding that I find here and there some doubtful expressions on the subject, I have myself no doubt whatever that the legitimate descendants of a European British subject retain the law of their ancestors, however remote the descent. The case has no analogy to that of the descendants of British subjects resident in a foreign country, who, I believe, are generally considered in three generations to lose their nationality, and with their nationality their legal *status* as subjects of their original country. But a British subject does not lose his nationality by residence in India, however long; nor was it contended, or could it be contended, that the inter-marriage with the Native women could in any way affect it.

Nor has the position of the plaintiff any analogy with that of Hindoos and Mahomedan Natives of this country, who have become Christians. It has been considered that the laws of Hindoos and Mahomedans are so much connected with their respective religions, that when any one of them gives up his religion, he gives up his legal *status* also. Such persons, therefore, are in the extremely awkward position of having no laws except those few that have been made expressly applicable to them by the Legislature, and perhaps a few universal laws of protection to person and property. But they have no share in any one of the various accumulations of rights and obligations which belong to the members of any long established civilized community, and nearly all material questions which arise between such persons have to be settled by loose analogy or supposed justice. But I find no authority for putting the descendants of British subjects in this unfortunate position, and it seems to me that to do so would be a violation of the protection which the Queen extends to her subjects in all parts of her dominions. I have, therefore, no doubt that the plaintiff is a person subject to the modified form of English Law usually administered in

this Court. I consider that there is no difference in this respect between a person of the plaintiff's descent, and a person of the purest English blood just arrived from England and domiciled here."

Persons not born in wedlock follow the nationality of their mothers, and may be considered British subjects, European foreigners, or Americans, according as their mothers may respectively be British, Foreign European, or American.

Before committing a European British subject for trial by a Court having jurisdiction, the Magistrate and Justice of the Peace holding the preliminary enquiry should satisfy himself that there is evidence of his being amenable to the jurisdiction of that Court. For this purpose, there should be produced the evidence of a credible person, who knows the accused and his place of birth, or who has heard him declare to what country he belongs. If an accused person plead before a Magistrate that he is a European British subject, and that, therefore, he is not amenable to the jurisdiction of the Local Courts, and the Magistrate has no reason to distrust this statement, it is sufficient for the Magistrate to act on this allegation; and, if he considers the evidence to be such as to warrant the commitment of the accused person to the High Court (or Chief Court in the Punjab), he should make such commitment. The Magistrate should, however, forward as a witness some person who heard the accused person make this plea.—(Calcutta High Court Cir. 5, 1864). A Magistrate is bound to give an accused person an opportunity of pleading that he is a European British subject when there is reason to believe that he is such.—*Id.* Clark *vs.* Beane, 5 W. R., 53.

The following opinion was delivered by the Advocate-General of Bengal, Mr. Ritchie, in March 1859, on the course to be taken in cases in which it is doubtful whether a person charged with an offence is a European British subject:—"If the Magistrate knows that the prisoner is a European British subject, it is his duty, whether the prisoner claims exemption or not, to abstain from further proceedings against him as a Magistrate. If, without any actual knowledge on the subject, the Magistrate have reason to suppose that the prisoner is such a British subject, it is the Magistrate's duty to ascertain from him whether he alleges or denies that he is one; and, if he alleges that he is, to give him every facility by allowing time and otherwise, for proving that he is, the burden of proof being on him. A Magistrate will not be justified, if he has reason to suppose that the prisoner is a European British subject, in proceeding against him as if he were not one, without first giving him a distinct opportunity of pleading that he is one. If he do not so plead, or be not able, upon time being allowed him for that purpose, the Magistrate will be quite warranted in proceeding against him. If he do so plead, and give proof, or produce documents which, although not amounting to full legal proof of his *status*, satisfy the Court that he is really a European British subject, the Magistrate should, without putting the prisoner fully to complete his proof by strict legal evidence, take up the case as a Justice of the Peace, and send it up to the Supreme Court, taking care to record distinctly the statement made by the prisoner that he is a British subject of lawful European descent.

"In the event of its being found necessary to commit a European British subject for trial before the Supreme Court, it is necessary for the conviction of such person that there be direct proof of his amenability to that Court. The mode of proof consists in the evidence of a credible person who knows the accused and his place of birth, or who has heard him declare of what country he is."

The duties of Magistrates in cases in which the accused persons may be European British subjects, and the penalties to which they are liable in consequence of any irregularity in their proceedings, were discussed and made the subjects of judicial decisions in the cases of Calder *vs.* Halkett (2 Moore's Indian Appeals, 293), R. *vs.* Foy (Taylor and Bell's Reports of cases decided by the Supreme Court, Calcutta, p. 219), Vithora Malhari *vs.* Corfield (3 Bombay, *Appendix*), and Paran Kussum Narasaya Pantulu *vs.* Captain Stuart and another (2 Madras, 296).

In the first mentioned case, the Judicial Committee of the Privy Council laid down that the defendant, who was a Magistrate in India, had not rendered himself liable to an action for trespass by reason of his having acted without jurisdiction in unlawfully confining a European British subject, *unless* "*he knew or ought to have known of the defect in his jurisdiction*," and as it appeared that there was no evidence on the part of the plaintiff to show that the defendant knew or ought to have known this fact, the appeal was dismissed.

The following is an extract from the judgment of the late Supreme Court, Calcutta, in the case of R. *vs.* Foy.—(Taylor and Bell, 219):—

"If the Magistrate know that the prisoner is a European British subject, it is his duty, whether the prisoner claims exception or not, to abstain from further proceedings against

him as a Magistrate. If, without any actual knowledge on the subject, the Magistrate have reason to suppose that the prisoner is such a British subject, it is the Magistrate's duty to ascertain from him, whether he alleges or denies that he is one; and if he alleges that he is, to give him every facility by allowing time, and otherwise, for proving that he is, the burden of such proof being on him. A Magistrate will not be justified, if he has reason to suppose that a prisoner is a European British subject, in proceeding against him as if he were not one, without first giving him a distinct opportunity of pleading that he is one. If he do not so plead, or be not able, upon time being allowed him for that purpose, to adduce any satisfactory proof of his being a European British subject, the Magistrate will be quite warranted in proceeding against him. If he do so plead, and give proof or produce documents which, although not amounting to full legal proof of his *status*, satisfy the Court that he is really a European British subject, the Magistrate should, without putting the prisoner fully to complete his proof by strict legal evidence, take up the case as a Justice of the Peace, and send it up to the Supreme Court, taking care to record distinctly the statement made by the prisoner that he is a British subject of lawful European descent.

"The law is, that if a Judge has no jurisdiction, and has the knowledge or means of knowledge of his want of jurisdiction, he is liable as a trespasser if he acts.—(Calder *vs.* Halkett, and the cases there referred to). The duty of a Court is to walk in the course prescribed for it, as it understands its limits, and not to assume a jurisdiction which has not been confided to it. If a Court have reasonable ground to doubt its jurisdiction, it should take care to clear up the point, and to allow time for the production of the proper evidence. It is undoubtedly true that if a Court of limited jurisdiction exceeds its jurisdiction by reason of the existence of a personal exemption, or other cause not communicated, not known to the Judge, or of which he has not the means of knowledge in his reach, the Judge and his Officers cannot be treated as trespassers. The case of the Marshalsea Court (cited in Mr. Baron Powell's judgment) shows that it is otherwise, where the means of knowledge are in the power of the Judge. It is, therefore, an unsafe doctrine to hold out to a Judge that he may disregard an apparently *bonâ fide* claim of personal exemption from his jurisdiction, which he knows, or has good reason to believe, is well founded, on the ground of the absence of legal proof of the fact of exemption; for in many cases no doubt can exist of the truth of facts which a party, incapacitated from giving evidence for himself, is under a temporary inability to prove, and the question would be whether the Judge really believed that he had the jurisdiction which he exercised. The question would not turn on this, *viz.*, on whom the *onus* of proof of the exemption would lie, if put in issue; but on the *bonâ fides* of the proceeding upon the claim of the exemption. The question before us, however, is unaffected by such consideration, for if there be error in the proceeding, it is not the less a proceeding of a Court of competent jurisdiction. It is not alleged that the Court knew that it wanted jurisdiction. That question might be tried in its appropriate mode of proceeding, either by Criminal or Civil Procedures. If a Judge discovers at any stage of the proceedings, that he has really no jurisdiction over the subject-matter or the person, he would be utterly inexcusable, if he proceeded further and did not do his utmost to remedy what had been unwittingly done in the belief of jurisdiction. The immunity from suit for judicial acts is in respect of the character of Judge, which, if a man assumes, knowing that in fact he is not so, either as to the subject-matter or the man, he neither merits nor has any immunity."

The following foot-note in Taylor and Bell's Reports is important, sinces it contains the only report of the case of Lang *vs.* Gubbins:—

"Since the above decision, the Bengal Government has passed the following Act, No. XVIII. of 1850:—

'For the greater protection of Magistrates and others, acting judicially: It is enacted as follows:—

'No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction; provided that he at the time in good faith believed himself to have jurisdiction to do or order the act complained of; and no Officer of any Court or other person bound to execute the lawful warrant or order of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially, shall be liable to be sued in any Civil Court for the execution of any warrant or order which he would be bound to execute, if within the jurisdiction of the person executing the same.'

"The construction of this Act, for the first time since its promulgation, was submitted to the opinion of the Judges of the Supreme Court (August, 1851) in the case of Lang *vs.* Gubbins, which was an action brought against a Mofussil Magistrate for issuing an illegal warrant to seize the plaintiff's goods and chattels.

"In that case, *Peel, C. J.*, in delivering the judgment of the Court, (after argument of the question,) held, that the words "in good faith" were merely an English version of the common Latin phrase "*bonâ fide*" of such frequent use in the law, both phrases having the same meaning; that the true construction of "good faith" appeared to be "that belief which, though erroneous, was excusable in the particular instance, or, in other words, that which stood on some reasonable grounds," and that this Act in fact protected excusable errors only, and could not be extended to errors which deserved no protection."

The case of Lang *vs.* Gubbins was quoted and followed by the late Bombay Supreme Court in the case of Vithora Malhari *vs.* Corfield (3 Bombay, Appendix), in which *Sir C. Yardley, C. J.*, stated:—"At first sight this Act (XVIII. of 1850) would seem to include almost all mistakes that a Magistrate could make. The question whether or not Mr. Corfield is protected by it turns altogether upon the expression, "provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of." If there had been an information duly sworn before Mr. Corfield, and if he had entered upon the case circumspectly, diligently, and carefully, and had given the plaintiff the opportunity of calling any witnesses whom he wished to call, and if, after having done all these things, he had been of opinion that the plaintiff should be convicted of the charge, I have no doubt that Mr. Corfield would have been protected, that is to say, if his error had been one in which a reasonable and a careful man might have fallen. And that construction seems quite in accordance with the case of Lang *vs.* Gubbins before Sir Lawrence Peel, *C. J.*, which has not been reported at length, but a summary of which has been given in a note to the case of *In re* Foy in I. Taylor and Bell's Reports. Sir Lawrence Peel is reported to have held that the words 'in good faith' were equivalent to *bonâ fide*, and that this Act in fact protected excusable errors only, and should not be extended to inexcusable errors. No higher authority—I say it without affectation—could be cited upon the construction of an Act of the Indian Legislature. If this had been tried by a Jury, I should have left it to the Jury to say whether the Magistrate had acted reasonably, circumspectly, and carefully; and I should have added that a man could not be said to have so acted unless he tried to avoid error. Did Mr. Corfield take this precaution? Without wishing to use any but the most measured language, I am clearly of opinion that he acted precipitately; consequently he cannot be said to have acted reasonably, carefully, and circumspectly, and therefore he is not entitled to the protection of this Act."

Sir C. Jackson, J., added:—"According to my view, the defendant is not within the protection of Act XVIII. of 1850. I was Counsel in Lang *vs.* Gubbins, in which Chief Justice Peel gave an elaborate judgment, unhappily not reported; but the substance of it is correctly stated in the note quoted by my learned brother. That case decided that if the conduct of the Magistrate was not *bonâ fide* within the legal meaning of that term, the Magistrate could not be protected by this Act. If all that appeared against Mr. Corfield in this case was that he had erroneously construed this Regulation I. of 1814,—if in all other respects his proceedings had been regular,—I am not prepared to say that he would not have been protected by this Act of 1850. It would be hard that a Magistrate should be held liable upon the mere ground of his misconstruing a Statute. But in this case he has proceeded on a charge which imputed no crime to the plaintiff, without any information, or the examination of a single witness upon oath, has carelessly entered a valid defence as a plea of guilty, and has inaccurately entered on his proceedings that a witness was examined. I cannot, therefore, say that he has acted with what the law regards as *bonâ fide*. Of course, I do not mean to impute to the defendant that he felt any positive malice towards the plaintiff, whom he probably never saw before in his life, but what I mean to say is, that where there is such irregularity, negligence, and inaccuracy, as is found to exist in this case, the law will not permit the defendant to say that he acted *bonâ fide*."

See also Vinayak Divakar *vs.* Bai Itcha, 3 Bombay, 36 *Civil Appeals*.

In the case of Paran Kusam Narasaya Pantulu *vs.* Captain Stuart and another (2 Madras, 396), in which a Magistrate was sued for having refused bail for a bailable offence, the Madras High Court delivered the following judgment:—

"As to the action against the Magistrate, it cannot be sustained. It is no question of jurisdiction, or it would be necessary to consider the extent to which the doctrine in Calder *vs.* Halket has been modified by Act XVIII. of 1850. Mr. Baron Parke in that

case suggested three possible constructions of the Act of Parliament, and decided that it protected Magistrates and Judges of inferior Courts from action for things done within their jurisdiction, but left them liable for things done wholly without jurisdiction. Then came the Act of 1850, which embodied Mr. Baron Parke's second possible construction of the old Act, and extended to Magistrates a protection within limits which it is not now necessary to define, for acts done without jurisdiction. Here, however, the bailing or not bailing was a question for the Magistrate. He had jurisdiction over that question, and the only allegation against him is that he erroneously decided it. It is quite clear that as he is not alleged to have acted maliciously in this matter within his jurisdiction, no action lies against him. Linford *vs.* Fitzroy (13 Q. B., 240) shows that the duty of the Magistrate, in accepting or refusing bail, is not merely a ministerial, but a judicial, duty. It also shows that a mistake in the exercise" of that duty without malice will not sustain an action."

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33 GEO. III., C. 52, S. 151.

Nomination and appointment of Justices of the Peace.

CLI. And whereas the Governor-General and the other Members of the Supreme Council of Fort William in Bengal, and the Chief Justice, and other Justices of the Supreme Court of Judicature at Fort William aforesaid, are at present the only persons authorized by law to act as Justices of the Peace within and throughout the provinces, districts, and countries, of Bengal, Behar, and Orissa; and the Governor or President, and the other Members of the Council of Fort Saint George, on the Coast of Coromandel; and the Governor or President, and the other Members of the Council of Bombay, are the only persons authorized by law to act as Justices of the Peace in and for the Presidency of Fort Saint George and the Presidency, Island, Town, and Factory of Bombay, and the places belonging and subordinate to the said two last mentioned Presidencies respectively. And whereas, for preserving and maintaining the peace in the said Provinces and Presidencies aforesaid, and the places subordinate thereto, it is expedient that a further number of persons should be appointed to act as Justices of the Peace in and for the same respectively: Be it, therefore, further enacted, that it shall and may be lawful to and for the Governor-General in Council of Fort William in Bengal for the time being, by commissions to be from time to time issued under the seal of the Supreme Court of Judicature there, in the name of the King's Majesty, his heirs and successors, tested in the name of the Chief Justice of the said Court (which said commissions the said Supreme Court of Judicature is hereby authorized and required from time to time, by any order or warrant from the said Governor-General in Council, to issue accordingly), to nominate and appoint such and so many of the covenanted servants of the said Company, or other British inhabitants, as the said Governor-General in Council shall think properly qualified to act as Justices of the Peace within and for the said Provincies, and Presidencies, and places thereto subordinate respectively, and such persons shall, according to the tenor of the respective commissions wherein they shall be so nominated and appointed, and by virtue thereof, and of this Act, have full power and authority to act as Justices of the Peace, according to the tenor of the same commissions, wherein they shall be respectively named, in and for the Provinces and Presidencies aforesaid, and places subordinate thereto respectively and the said Supreme Court, upon any requisition in writing from the said Governor-General in Council, shall and may from time to time supersede such commissions, and upon like requisition issue new commissions for the purposes aforesaid, unto the same or such other of the covenanted servants of the said Company, or other British inhabitants, as shall from time to

time be so nominated by the said Governor-General in Council in that behalf, all which commissions shall be filed of record in the respective Courts of Oyer and Terminer of the Province, Presidency, or Place wherein and for which the same shall be issued as aforesaid: Provided always that the persons who shall be so nominated and appointed as aforesaid shall not be capable of holding any Court of Oyer and Terminer and Goal Delivery, nor to sit in any such Court, unless the Justices of the said Court shall, on any particular occasion, call upon them so to do, in which case, and so often as the same shall happen, the persons so called upon shall and may for that time associate with them, and sit as Justices of the said Court of Oyer and Terminer and Gaol Delivery by virtue of this Act, and have a deliberative voice, being first specially authorized for that purpose by order in Council.

47 Geo. III. c 68, S. 6, repeals so much of the above as authorizes the Governor-General in Council to appoint Justices of the Peace for Fort St. George or Bombay, that authority being given by S. 5 to the Governor in Council of the respective Presidencies. The 2 and 3 Wm. IV. c. 117, S. 1, removes the restriction as to British inhabitants, and renders eligible as Justices of the Peace within and for the towns of Calcutta, Madras, and Bombay, all persons not subjects of a Foreign State. Under Act VI. of 1845, separate commissions may be issued.

Oath to be taken.

CLII. Provided always, and be it further enacted, that no person to be nominated and appointed in and by any such commission as aforesaid shall be capable of acting as a Justice of the Peace in any of the said Provinces or Presidencies, until he shall have taken and subscribed in the Court of Oyer and Terminer of the Province or Presidency for which he shall be appointed to act as a Justice of the Peace, the like oaths as are appointed to be taken by Justices of the Peace in Great Britain, or as nearly to the tenor thereof as the case will admit, and as shall be approved by the said Court; the oath of qualification prescribed by an Act of the eighteenth year of His Majesty King George the Second,* instituted, "An Act to amend and render more effectual an Act passed in the fifth year of his present Majesty's Reign, instituted, 'An Act for the qualification of Justices of the Peace,'" only and always excepted.

* 18 Geo. II. c. 20.

18 Geo. II. c. 20 has been superseded by Act XXVII. of 1860, entitled "An Act to substitute certain declarations for the oaths of qualification taken by Justices of the Peace." S. 2 of that Act declares that "all persons who are and shall be nominated and appointed in any Commission of the Peace, shall be capable of acting as Justices of the Peace in every respect according to the terms of such Commission, upon making or subscribing before any other Justice of the Peace, or the Chief Civil Officer of any Station within the places in and for which the Commission shall have issued, declarations to the following effect:—

"I declare that I will be faithful and bear true allegiance to Her Majesty Queen Victoria."

"I declare that I will truly and faithfully discharge the office of Justice of the Peace."

"The subscriptions of such persons to the said declarations shall be deposited and kept with the records in the Home Department of the Office of the Secretary to the Government in the Province wherein such declarations shall have been made."—S. 3.

Writ of certiorari.

CLIII. Provided always, and be it further enacted and declared, that all convictions, judgments, or orders, and other proceedings, which shall be had, made, or pronounced by or before any Justice or Justices of the Peace within any of the British settlements or territories in India, out of the Court of Oyer and Terminer within and for the same, shall and may be removable by writ of *certiorari*, into the Court of Oyer and Terminer and Gaol Delivery of and for the same Presidency, at the instance of any of the parties thereby affected or aggrieved,

at any time within the space of six calendar months next, after the making or pronouncing thereof respectively; and for that purpose it shall and may be lawful to and for any one or more of the Justices of the said Court of Oyer and Terminer and Gaol Delivery, and such Justice or Justices is, and are hereby required, at the instance of such party or parties, to grant his *fiat* or warrant to the Keeper of the Rolls of the Peace, or other proper Officer, to award a writ of *certiorari* under the Seal of the Supreme Court of Judicature, when the matter shall arise in Bengal, Behar, or Orissa, or, if it shall arise in the Presidency of Fort St. George, or in the Presidency of Bombay, or in any settlement or place subordinate thereto respectively, then under the Seal of the Mayor's Court* of the Presidency wherein the matter shall so arise, or to which the cognizance thereof shall belong, for the removal and bringing of such conviction, judgment, order, or other proceeding into the said Court of Oyer and Terminer and Gaol Delivery, and that the said Court of Oyer and Terminer and Gaol Delivery shall have full power and authority to hear and determine the matter of such conviction, judgment, order, and other proceeding so removed, and to quash and affirm the same, so that the same be not quashed for want of form, but on the merits only, and to pronounce judgment thereon, in the like manner as the Court of King's Bench at Westminster can or may do upon convictions, judgments, orders, or other proceedings had or made by or before any Justices of the Peace or Court of Quarter Sessions in England, removed, or brought into the said Court of King's Bench by writ of *certiorari*.

* Now High Court.

S. 410 of the Code of Criminal Procedure gives the right of appeal to the Court of Session to any person convicted and sentenced by a Justice of the Peace, and also provides that cases so appealed shall not be afterwards liable to revision by means of a writ of *certiorari*.

Recognizances required.

CLIV. Provided also, and be it enacted and declared, that before the granting of any such writ, the like recognizance shall be entered into, and the party or parties applying for such writ shall be put under the same terms and conditions in all respects, as are by law directed and provided in the cases of writs of *certiorari* awarded or granted for the removal of any conviction, judgment, order, or other proceeding had or made by or before any Justice or Justices of the Peace in England into the said Court of King's Bench, or as by the usage and practice of the same Court hath been accustomed.

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53 GEO. III., C. 155, S. 105.

S. 42 of the Code of Criminal Procedure declares that the jurisdiction given by this Statute shall be exercised *only by a Justice of the Peace.*

Justices of Peace in the provinces shall have jurisdiction in case of assault and trespass committed by British subjects on the Natives of India

CV. And whereas His Majesty's British subjects resident in the British territories in India, without the towns of Calcutta, Madras, and the town and island of Bombay, are now, by law, subject only to the jurisdiction of His Majesty's Courts at Calcutta, Madras, and Bombay respectively, and are exempted from the jurisdiction of the Courts established by the said United Company within the said territories, to which all other persons, whether Natives or others, inhabitants in the said territories without the limits of the towns aforesaid, are amenable: and whereas it is expedient to provide more effectual redress for the Native inhabitants of the said territories, as well in the case of assault, forcible entry, or other injury accompanied with force, which may be committed by British subjects at a distance

from the places where His Majesty's Courts are established, as in case of civil controversies with such British subjects ; Be it, therefore, enacted that it shall and may be lawful for any native of India, resident in the East Indies, or parts aforesaid, and without the said towns, in case of any assault, forcible entry, or other injury accompanied with force, alleged to have been done against his person or property by a British subject, to complain of such assault, forcible entry, or other injury accompanied with force, not being felony,* to the Magistrate of the Zillah or District where the alleged offender shall be resident, or in which such offence shall have been committed ; and that such Magistrate shall have power and authority, at the instance of the person so complaining, to take cognizance of such complaint, to hear parties, to examine witnesses, and, having taken in writing the substance of the complaint, defence, and evidence, to acquit or convict the person accused ; and, in case of conviction, to inflict upon such person a suitable punishment, by fine, not exceeding five hundred Rupees, to be levied in case of non-payment by warrant under the hand of the said Magistrate, and upon any property of the party so convicted, which may be found within the said District, and if no such property shall be found within the said District, then it shall be lawful for the said Magistrate, by warrant also under his hand, to commit such offender to some place of confinement within the said Zillah or District, which in the judgment of the said Magistrate shall be fit for receiving such offender ; or if there shall be no fit place of confinement, then to the gaol of the presidency, to remain there for a period not exceeding two months, unless such fine shall be sooner paid ; and it shall be lawful for the said Magistrate to award the whole or any portion of such fine to the party aggrieved, by way of satisfaction for such injury.

Justices of the Peace are by S. 163, Code of Criminal Procedure, empowered to punish European British subjects committing offences under Ss. 175, 178, 179, 180, 228 of the Indian Penal Code, in the view or presence of any Civil, Criminal, or Revenue Court, to the same extent as under this Statute they can punish for an assault.

Provided† *always, that in all cases of conviction of British subject, under the provision hereinbefore contained, the Magistrate before whom such conviction shall take place shall forthwith transmit copies of such conviction, and of all depositions and other proceedings relative thereto to the Government to which the place wherein the offence was committed is or shall be subordinate.*

Copy of conviction and proceedings to be sent to the Government.

Provided also, that all such fines shall be paid in the first instance to the Magistrate before whom the party offending shall be convicted, and the amount thereof, after making such satisfaction to the party aggrieved as aforesaid, if any, shall be transmitted by such Magistrate to the Clerk of the Crown, or other officer to whom it belongs to receive fines in his Majesty's Court of Oyer and Terminer and Gaol Delivery for the Province within which the offence shall have been committed; and such fines shall and may be disposed of in the same manner as other fines imposed by such Court of Oyer and Terminer and Gaol Delivery.

Fines to be paid to the Magistrate.

Application thereof.

* The Indian Penal Code does not distinguish between felonies and misdemeanors. In the case of Reg. *vs.* Dayal Jairaj and others (3 Bombay, 20—*Crown cases*), it was held by the Bombay High Court that the punishment of an offence by forfeiture, under Section 62, Penal Code, will not make it a felony, but that the distinction between misdemeanors and felonies was one peculiar to English Law, and must be determined by it. When a new offence is enacted by the Penal Code, the Judge should exercise his own discretion in deciding whether it is a felony or misdemeanor

† The part printed in Italics has been repealed by Act XXII. of 1854.

Convictions removable by certiorari and subject to provisions of 33 Geo. 3, C. 52.

Provided also, that all such convictions shall and may be removable by writ of *certiorari* into the said Courts of Oyer and Terminer and Gaol Delivery respectively, in the same manner, and upon the same terms and conditions, and shall be proceeded upon in the same manner in every respect as is directed in the said Act of the thirty-third year of His Majesty's reign, with regard to other convictions before Justices of Peace in the British settlements or territories in India; provided also, that nothing herein contained shall extend, or be construed to extend, to prevent such Magistrate from committing or holding to bail any British subject charged with any such offence before him, in the same manner as such British subject might have been committed or holden to bail if this Act had not been passed, where the offence charged shall appear to such Magistrate to be of so aggravated a nature as to be a fit subject for prosecution in any of His Majesty's Courts to which such British subject may be amenable.

S. 410 of the Code of Criminal Procedure declares that "any person convicted and sentenced by any Justice of the Peace exercising jurisdiction under the Statute 53, George III, c. 155, S. 105, or under Act VII. of 1853 *(to extend the jurisdiction of Magistrates under the 53 George III, c. 155, S. 105, in cases of assault, forcible entries, and other injuries, accompanied with force, not being felonies)*, or under S. 163 or S. 165 of this Act, may appeal to the Court of Session having jurisdiction at the place at which the appeal would have been heard, had the sentence been passed by a Magistrate subordinate to such Court. Cases appealed under this Section shall not be afterwards liable to revision by means of a writ of *certiorari*. Provided that nothing in this Section shall be held to take away the power of quashing any conviction by means of a writ of *certiorari* in any other case than when there has been such an appeal as aforesaid.

ACT No. VII. OF 1853.

(PASSED ON THE 15TH APRIL, 1853).

An Act to extend the jurisdiction of Magistrates, under the 53rd George 3rd, Cap. 155, Sec. 105, in cases of assaults, forcible entries, and other injuries accompanied with force, not being felonies.

Whereas, by an Act passed in the 53rd year of the reign of King George the 3rd, it was enacted amongst other things that it should be lawful for any Native of India resident in the East Indies or parts therein mentioned, and out of the Towns of Calcutta, Madras, and Bombay, in case of any assault, forcible entry, or other injury accompanied with force, not being felony * alleged to have been done against his person or property by a British subject, to complain of such assault, forcible entry, or other injury accompanied with force, not being felony,* to the Magistrate of the Zillah or District where the alleged offender should be resident, or in which such offence shall have been committed, and that such Magistrate should have the power and authority therein mentioned: and whereas Natives of India resident in the East Indies, upon complaints preferred by them under the aforesaid provisions of the said Act, may be prevented from obtaining redress under the same, by reason of there inability to prove the place of their birth; and whereas it is expedient to extend the aforesaid provisions of the said Act as amended by Act IV. 1843* to cases of assault, forcible entries, and other injuries accompanied with force, not being felonies* committed in any part of the territories under the Government of the East India Company, not being within the said towns of Calcutta or Madras, or the Islands of Bombay and Colaba, or the settle-

* See note to page 343.

ment of Prince of Wales' Island, Singapore, and Malacca, against the person or property of any person whatever, whether a Native of India or not: It is enacted as follows:

I. The provisions of the said Act of the 53rd George 3rd and of Act IV. 1843,† so far as the said provisions extend to cases of assault, forcible entries, or other injuries accompanied with force, not being felonies,* against the person or property of any Native of India, are hereby extended to the case of any assault, forcible entry, or other injury accompanied with force, not being felony,* which may at any time hereafter be committed in any part of the territories under the Government of the East India Company, not being within the said towns of Calcutta or Madras, the said islands of Bombay and Colaba, or the said settlement of Prince of Wales' Island, Singapore and Malacca, by any British subject or other person against the person or property of any person whatever.

II. The powers in such cases given to the Magistrate of the Zillah or District may be lawfully exercised by any Joint-Magistrate or other person lawfully exercising the power of a Magistrate, in the case of any such offence as aforesaid, which may hereafter be committed within the district over which his authority extends.

This Section has been modified by S. 42 of the Code of Criminal Procedure, which declares that the jurisdiction given by Act VII. of 1853 shall be exercised *only by a Magistrate who is a Justice of the Peace.*

The following opinion has been delivered by the Advocate-General, Bengal, regarding the Procedure to be observed by a Magistrate and Justice of the Peace in levying a fine imposed upon a European British Subject.

Fine how to be levied.

Under these provisions, (*i. e.*, under 53 Geo. 3, C. 155, S. 105, and Act VII. of 1853,) the power to imprison is only given in default of "property within the district" in which the fine could be levied; so that unless it be at the time of conviction proved before the Magistrate, or confessed by the party fined, that he has no property within the district, an attempt to levy by warrant must be made before the Magistrate can commit the offender. After conviction and demand of the fine, the Magistrate may, in default of payment immediately issue his warrant to levy the fine; and default would be incurred, if the offender, after demand made of payment, were to quit the Court without making payment. But the Magistrate has no authority, after conviction passed, to detain the defendant, or require bail for his appearance, till it be ascertained whether there be property within the district on which the fine can be levied. He can only take bail under Section 105 in such cases as are therein specified. If, however, it be at the time of conviction proved before the Magistrate, or confessed by the offender, that he has no property within the district, the Magistrate, after recording the proof or confession last mentioned, may at once commit for the fine. The offender is not bound upon

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* See note to page 343.

† Act IV. of 1843 has been repealed by Act XVII. of 1862, and re-enacted by S. 410 of the Code of Criminal Procedure, which declares that "any person convicted or sentenced by any Justice of the Peace exercising jurisdiction under the Statute 53 George III, c. 155, s. 105, or under Act VII. of 1853 *(to extend the jurisdiction of Magistrates under the 53 George III, c. 155, in cases of assault, forcible entries, and other injuries accompanied with force, not being felonies)*, or under S. 163 or 165 of this Act, may appeal to the Court of Session having jurisdiction at the place at which the appeal would have been heard, had the sentence been passed by a Magistrate subordinate to such Court. Cases appealed under this Section shall not be afterwards liable to revision by means of a writ of *certiorari*. Provided that nothing in this Section shall be held to take away the power of quashing any conviction by means of a writ of *certiorari* in any other case than when there has been such an appeal as aforesaid."

conviction to disclose his property, or to declare whether he has property or not. If he be known to have property, or if it be doubtful whether he have any within the district, the Magistrate should issue his warrant to levy and deliver it to his officers for execution in the usual manner. The offender may rebut the proof tendered of his having no property, and give evidence of his having property, to prevent immediate commitment as above, and the Magistrate is bound to receive such evidence if tendered; and he should call upon the offender to say whether he has anything to offer in contradiction of the evidence of no property. If a warrant to levy the fine be issued, it is indispensable that notice of the seizure and intended sale be given by public advertisement; and, if practicable, by service on the offender himself; and the shortest notice that should be given is such as is requisite in cases of distress for rent* or the like. As to the meaning of the term "property," it seems that the warrant of the Magistrate for levying, in default of sufficient personal property, may be executed on the real property if any of the offender. But it should be in all cases executed in the first instance on the personalty, because as the Statute makes no provision for the transfer of realty to the purchaser, difficulties might arise as to his title, especially if he sue for possession in Her Majesty's Court. Only the right, title, and interest (or property) of the offender can be sold. The Magistrate, or his officer, may deliver over his personal property seized and sold under the warrant to the purchaser, but has no authority to dispossess the party in possession of realty, or to deliver possession of it to the purchaser. He must leave him to recover possession by process of law. It may be that the offender has not the right of possession, but only the right of property. The Magistrate should deliver to the purchaser the certificate or other document usually delivered in the Mofussil to purchasers under judicial execution, and there end his duty. If the executing officer has sold (as he ought) merely the right, title, and interest of the offender, the purchaser has no remedy against the Magistrate should that right, &c., prove to be moonshine. The risk of what property may be in the offender lies with the purchaser. Of course no assurance of title or interest should be held out to the purchaser at the time of sale; and in such case the Magistrate can have no right to retain the purchase-money until the title be ascertained.—*Opinion of Advocate-General in C. O. No. 79 of Vol. 4, Calcutta Sudder Court's Circular, dated 25th February, 1852; and opinion of the Officiating Advocate-General, dated 7th January 1852.*

* *i. e.*, five days.

In connection with Ss. 41 and 226 of the Code of Criminal Procedure, it is well to note the following provisions of Statute 9 Geo. IV. c. 74, Ss. 2, 3, 4.

Where any person is taken on a charge of felony or suspicion of felony before a Justice of the Peace at any place beyond the local limits of the Jurisdiction of any of Her Majesty's Courts of Justice erected or to be erected within the British territory, and the charge is supported by positive and credible evidence of the fact, or by such evidence as, if not explained or contradicted, raises in the opinion of the Justice a strong presumption of the guilt of the person charged, such person is to be committed to prison by such Justice in the manner hereinafter mentioned; but if the evidence in support of the charge is not in the opinion of the Justice such as to raise a strong presumption of the guilt of the person charged, and to require his or her committal, or such evidence is adduced on behalf of the person charged, as in his opinion weakens the presumption of his or her guilt, but there not-

withstanding appears to him, in either of such cases, to be sufficient ground for judicial enquiry into his or her guilt, the person charged is to be admitted to bail by such Justice in the manner hereinafter mentioned: provided always that nothing herein contained is to be construed to require any such Justice to hear evidence on behalf of any person so charged as aforesaid, unless it appears to him to be meet and conducive to the ends of justice to hear the same.—*Section* 2.

The Justice of Peace, before he admits to bail or commits to prison any person arrested for felony or on suspicion of felony, is to take the examination of such person, and the information upon oath of those who know the facts and circumstances of the case, and is to put the same or as much thereof as is material into writing, and the Justice is to certify such bailments in writing, and every such Justice has authority to bind by recognizance all such persons as know or declare anything material touching any such felony or suspicion of felony to appear at the next Court of Oyer and Terminer, or Jail Delivery, or superior Criminal Court, or Session of the Peace at which the trial thereof is intended to be, then and there to prosecute or give evidence against the party accused, and such Justice is to subscribe all such examinations, informations, bailments, and recognizances, and to deliver or cause the same to be delivered, to the proper officer of the Court, in which the trial is to be before, or at the opening of the Court.—*Section* 3

Every Justice of the Peace before whom any person is taken on a charge of misdemeanor or suspicion thereof, is to take the examination of the person charged, and the information upon oath of those who know the facts and circumstances of the case, and is to put the same, or as such thereof as is material, into writing, before he commits to prison or requires bail from the person so charged, and in every case of bailment. is to certify the bailment in writing, and has authority to bind all persons by recognizance to appear to prosecute or give evidence against the party accused in like manner as in cases of felony; and is to subscribe all examinations, information, bailments and recognizances, and to deliver, or cause the same to be delivered, to the proper officer of the Court, in which the trial is to be before or at the opening of the Court in like manner as in case of felony.—*Section* 4.

As regards the amenability of British Officers and Soldiers to Magistrates under the 53rd George III. Chap. 155, with reference to the provisions of the 4th George IV. Chap. 81 and Regulation XX. 1825, the following opinion has been given by the Advocate-General, Bengal:—

The Statute 4th George IV. Chap. 81, although it repealed the next or 106th Section of the Statute 53 George III. Chap. 155, leaves the 105th Section unrepealed; and Regulation XX. 1825, which was enacted by a subordinate legislature, and in my opinion solely with a view of carrying out the provision of Statute 4th George IV. Chap. 81, cannot in any way affect the operation of the Statute 53 George III. Chap. 155. The Statute 4 George IV. Chap. 81 has been amended and re-enacted by successive enactments, 3 and 4 Vic. Chap. 37, and 12 and 13 Vic. Chap. 43, and since then by 20 and 21 Vic. Chap. 66. Under the latter Acts, the same powers as were formerly conferred upon Courts-Martial, distant more than 120 miles from the Presidency, have been continued; but they both contain an express provision that nothing in those Acts contained shall be construed to exempt any Officer or Soldier from being proceeded against by the ordinary course of law,—a provision which leaves the jurisdiction of the Magistrates under Statute 53 George III. Chap. 155, and Act V. 1848, and that of the Supreme Courts wholly untouched. With respect to offences committed by British Officers and Soldiers, and not falling within the terms of Statute 53 George III. or Act V. 1848, I am of opinion that they are only cognizable by the Supreme Court,* or Courts-Martial, both of which Courts appear to me to have concurrent jurisdiction over British Officers resident beyond 120 miles from the Presidency.

* *i. e.*, by a High Court in its Extraordinary Original Criminal Jurisdiction.

CIRCULAR No. 5, 1864, ISSUED BY THE CALCUTTA HIGH COURT.

It has been represented to the Court that Magistrates and Justices of the Peace, after making commitments to the High Court in its Original Criminal Jurisdiction, do not promptly send the records of cases to the Clerk of the Crown, but frequently delay doing so until the commencement of the Sessions at which the cases are to be tried. Such a practice causes great inconvenience to all concerned, and deprives the Judge generally of the opportunity which he ought to have for looking over the depositions of the witnesses before *the Grand Jury is charged and** the case goes to trial. This Court is not aware of any reason for this delay in sending the record to the Clerk of the Crown, and, after this Circular, will not fail to notice with its displeasure any such delay on the part of any Magistrate or Justice of the Peace. The Court takes this opportunity of reminding Magistrates and Justices of the Peace that a copy of the warrant of commitment should always form part of the record which is sent to the Clerk of the Crown.

2. The Court also requests the particular attention of Magistrates and Justices of the Peace to Rule 3 of the Rules† circulated for their guidance by Circular 85 of the Secretary to the Government of Bengal, dated the 27th July 1860, which requires that all witnesses should be bound, in the usual form, to attend at the Court-House on a day specified, which should be the *first day of the Sessions* for which the prisoner is committed, and which should be the next following Sessions after the commitment, if there is a sufficient interval of time between the commitment and the next Sessions, and if not, then to the next following Sessions.

3. In order to ensure uniformity, the depositions of witnesses should be invariably recorded on foolscap paper and in a legible hand-writing, the lines not being too closely written.

4. The following heading should commence each deposition :—

The deposition of taken, under the solemn affirmation prescribed by Act V. of 1841, before me Justice of the Peace, this day of

5. To save unnecessary labor, the Court thinks that it would be well if Officers requiring such forms applied in the proper quarter for a supply of printed headings of this description.

6. The depositions should invariably be subscribed with the Memorandum required by Section 199 of the Code of Criminal Procedure, the facts always being, as by law required, in accordance with the Memorandum.

7. As a rule, cases in which *primâ facie* it may appear that a person is charged with an offence for which he can be tried only by the High Court in its Original Jurisdiction, should be enquired into by Magisterial Officers who are competent to commit the accused ; but if it happens, as sometimes it may, that a charge is entertained, in the first instance, by an Officer who finds that he has no jurisdiction to proceed, and is, therefore, compelled to stay further proceedings, and refer the case to a competent Officer, in such cases the evidence should be taken afresh by such competent Officer, and as the proceedings held by the first Officer do not constitute the legal basis of any subsequent commitment, they should not form part of the record sub-

* The words in italics are obsolete as the Grand Jury has since been abolished by Act XIII. of 1865.
† These rules follow this Circular.

mitted to the High Court, and should not be transmitted as part of the record to the Clerk of the Crown.

8. The Clerk of the Crown states that not unfrequently Justices apply to him for advice and direction on various points, as, for example, respecting the course of the investigation, the sufficiency of the evidence, the number of the witnesses to be sent down, the selecting of some, and other similar matters of detail. The Clerk of the Crown represents that generally he refers such applications to the Solicitor to Government for reply, that Officer being able to obtain the opinion of the Law Officers of the Government. The Court is of opinion that it would be better, in such cases where Justices require advice or direction (except as to what merely concerned the office of Clerk of the Crown), that they should apply direct to the Solicitor to Government. The Clerk of the Crown has suggested that, at the examination of the prisoner, the Officer in whose charge the prisoner, if committed, will be sent down, should be present, in order that he may be able to prove the examination and signature of the prisoner to it, as in some cases this proof is required to establish the fact of British origin, on which the jurisdiction to commit and try depends. Much inconvenience is often occasioned by witnesses from the Mofussil, through their want of information as to the means of getting quarters, if they are poor and strangers, and as to the means of obtaining their expenses. They should be informed that the Commissioner of the Police of Calcutta has charge of these matters, and not the Clerk of the Crown.

The following rules for the observance of Mofussil Magistrates in cases of British subjects, committed by them for trial by the Supreme (now High) Court, Calcutta, received the sanction of the Government of Bengal and were published on the 27th July 1860.

1. European prisoners, when committed, must be sent with their warrants of commitment to the Great Jail of Calcutta to the custody of the Sheriff, and a letter should be sent to the Commissioner of Police in Calcutta, giving the names and crime of the prisoner, as also the date and mode of forwarding him to Calcutta.

This rule has been superseded by the Calcutta High Court's Circular No. 8, dated 6th August 1866, which directed that all warrants for the commitment of such European British subjects should be directed to the Superintendent of the Presidency Jail in Calcutta, and should be in the Form C. Appendix of Forms, Code of Criminal Procedure; and in pursuance of Section 9 Act XII. of 1865, the following words should be added at the end of the form before the date—"and you are hereby required to have the body or bodies of the said before the said High Court for trial at the Sessions of the Court next ensuing the date hereof."

Act XII. of 1865 has since been repealed, but the provisions of S. 9 have been re-enacted in S. 12 Act XII. of 1867.

2. The depositions taken in the case must be sent at the same time to the Clerk of the Crown, and the exhibits, such as swords, bludgeons, or stolen property, in charge of the Police Officers who can testify to them.

3. All witnesses must be bound down in recognizances to attend at the Supreme (High) Court in Calcutta at noon on the first day of the first Sessions.

4. The Magistrate should intimate to the Commissioner of Police by letter the names of the witnesses and direct them all, European and Native, immediately on their arrival in Calcutta to leave their names and addresses

at the Calcutta Police Office, where they will receive any information or assistance they may require.

5. The witnesses, on the conclusion of the trial, will receive their travelling expences, on application to the Commissioner of Police.

6. Magistrates should be careful that while they send down those witnesses who may be necessary for a proper investigation of the case, none others should be compelled to leave their homes. The evidence of Native witnesses to Soorut-hâls and such documents are never taken in the Supreme (High) Court. For instance, if the Civil Surgeon has examined the body of the murdered or wounded man, his evidence will be sufficient, without that of the Natives who saw the wounds in the Darogah's Mofussil investigation. The presence of obviously unnecessary witnesses invariably calls down the animadversions of the Judge of the Supreme (High) Court.

The Calcutta High Court has also in Circular No. 8, 1866, quoted above, ordered that the warrant of commitment ought always to be delivered to the Officer in whose custody the prisoner is sent, in order that he may deliver it with the prisoner to the Superintendent of the Jail as his authority to receive and detain the prisoner. In addition to the warrant of commitment, a warrant should be directed to the Police Officer in charge of the prisoner, and should direct him to take the prisoner and deliver him to the Superintendent of the Presidency Jail. A form of such warrant is given.

To (the name of the Officer or Officers sent in charge of the prisoner) and to all other Her Majesty's Peace Officers in the Provinces and Districts of Bengal, Behar, and Orissa, and places subordinate thereto whom this may concern.

Whereas

of is charged with (state the offence as in warrant of commitment) and has been committed by me, the undersigned Justice of the Peace, for Bengal, Behar, and Orissa,* and the places subordinate thereto, to the Superintendent of the Presidency Jail for trial before the High Court of Judicature at Fort William in Bengal. You are, therefore, hereby required to receive the said into your custody, and to deliver him into the custody of the Superintendent of the Presidency Jail in Calcutta to be there safely kept until he shall be thence delivered by due course of law.

* This should be according to the appointment to the office of Justice of the Peace.

Dated the day of

Justice of the Peace
for Bengal, Behar, and Orissa, and the places subordinate thereto.

The following forms were prepared by the Solicitor to Government, and were circulated for use among the Magistrates in Bengal by the Superintendent of Police in 1844.

To the Keeper of the House of Correction (or other place of confinement).

Warrant of imprisonment.

Receive into your custody the body of J. S. herewith sent you, he, the said J. S. being convicted before me W. C. B., Esq., one of Her Majesty's Justices of the Peace, and Magistrate of upon the oaths (or solemn affirmation) of two credible witnesses, with having on the ——— day of ———, in the year of our Lord one thousand eight hundred and ——— (here state the offence,) and him the said J. S. safely imprison (or, safely imprison and keep to hard labor) for the space of ———, unless the said sums shall be sooner paid ; when you will bring him again before me, in order that he may be discharged by due course of law.

Given under my hand and seal, ——— this ——— day of ———, 18 —— *To the Constable of the* ——— *in the Zillah of* ——— *and to the Keeper of Her Majesty's* ——— *at Calcutta.*

Another form of warrant of imprisonment.

Whereas ——— of ——— (profession) ——— was convicted by and before me the undersigned ——— Magistrate of the Zillah of ———, for that the said ——— did on the —— day of ——— in the present year in the Zillah aforesaid ——— and was adjudged by me, the said Magistrate, to be imprisoned for the space of ———: These are, therefore, to require you the said Constable to take and forthwith convey the said ——— to the said ——— at Calcutta, and deliver ——— to the said keeper thereof, together with this precept: And you, the said keeper, are hereby commanded to receive the said ——— into your custody in the said ——— there to be imprisoned for the space of ——— and for your so doing, this shall be your sufficient warrant. Given under my hand and seal the —— day of ——— in the year of our Lord one thousand eight hundred and ———.

Magistrate and Justice of the Peace.

To———

Writ for distress of goods of European British subject to recover fine under 53rd George III.

Whereas ———, a British subject of Her Majesty, at present residing in ———, was, in pursuance of an Act of Parliament passed in the fifty-third year of His Majesty King George the third, entitled an Act, &c., this ——— day of ——— in the year of our Lord 186—, duly convicted before me ——— Magistrate of the Zillah —— of having ——, and was adjudged by me, the Magistrate aforesaid, to pay ———; and whereas the said ——— having notice of my said order ——— these are therefore to command you to levy the said sum of ——— by distress and sale of the goods and chattels of the said ———; and I do hereby order and direct that the goods and chattels so to be distrained be sold, and disposed of within ——— days ——— unless the said sum of ——— for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid: and you are hereby commanded to certify to me what you shall do by virtue of this my warrant.

Given under my hand and seal at ——— this ——— day of ———186–.

Magistrate and Justice of the Peace.

To———

Warrant for arrest of European British subject on failure to levy fine by distress.

Whereas ———, a British subject of Her Majesty, at present residing in ———, was, in pursuance of an Act of Parliament passed in the fifty-third year of His Majesty King George the third, entitled an Act, &c. and Act VII. of 1853, this ——— day of ——— in the year of our Lord 18—, duly convicted before me ——— Magistrate of the Zillah of ———, of having ———; and was adjudged by me, the Magistrate aforesaid, to pay ———; and whereas the said ——— having notice of my said order, has ———; and whereas it appears to me by the return of ——— of the Zillah of ——— dated the ———day of ——— that he hath made diligent search for, but doth not know of, nor can find any goods and chattels of the said ———, whereof the said sum of ——— may be levied pursuant to my warrant duly made and issued for the levying the said sum of ——— by distress and sale of the goods and chattels of the said

———— these are therefore to command you, the said ———— of the Zillah of ———— to convey the said ———— to the Jail aforesaid: And these are also to command you, the keeper of the said Jail, to receive ———— the said ———— into the said Jail, and there to keep without bail or mainprize for the space of ————unless the said sum of ———— so ordered to be paid as aforesaid shall be sooner satisfied.

Given under my hand and seal this ———— day of ———— 18—.

Magistrate and Justice of the Peace.

The following notification has been issued by the Government of India (Gazette of India of 1867, page 36) extending the Original Criminal Jurisdiction of the High Courts over European British subjects.—Under the powers conferred by the Act 28 Vic., Cap. 15, the Governor-General in Council is pleased to declare, with reference to local situation and facility of communication, that Original Criminal Jurisdiction over European British subjects of Her Majesty shall be hereafter exercised by the several High Courts established at Fort William, Madras, Bombay, and in the North-Western Provinces of India, respectively, as below provided:—

Jurisdiction shall be exercised by the High Court at Fort William in—
The Chutteesgurh Division of the Central Provinces.
The Upper Godavery District.

By the High Court at Madras in—
Coorg.

By the High Court at Bombay in—
The Nagpore and Nerbudda Divisions of the Central Provinces.

By the High Court of the North-Western Provinces in—
Oudh.
The Jubbulpore Division of the Central Provinces.

The Governor-General in Council is also similarly pleased to declare, in virtue of the authority conferred upon him by the Act 28 Vic., Cap. 15, that Original Criminal Jurisdiction over European British subjects of Her Majesty, being Christians, resident in the Native States and Chiefships below named, shall, from this time forth, and until further orders by the Governor-General in Council, be exercised by, and distributed among, the several High Courts of Judicature in India, respectively, as follows:—

By the High Court at Fort William in—
Munnipore.
Cooch Behar.
The States in the Cossyah Hills.
Sikkim (exclusive of Darjeeling).
Bhootan.
Hill Tipperah.
Nipal.

By the High Court at Madras in—
Mysore.
Travancore.
Cochin.
Poodoocottah.
Bunganaputty.
Sundoor.

By the High Court at Bombay in—
Hyderabad Assigned Districts.
Hyderabad excepting the Assigned Districts.
Ali Morad's territory in Upper Sind.
Kolhapore.
Sawunt Warree.
Southern Mahratta States.
Jingeera.
Sucheen.
Bansda.
Dhurmpore.
Jowar.
Cambay.
Guikwar's territories.
Kattywar.
Kutch.
Pahlunpore.
Mahee Kanta.
Rewa Kanta.
Piuth, in the Ahmednugger Collectorate.
Bhopal.
Burwanee.
Dewass.
Dhar.
Indore (excepting the District of Alumpore in Bundlecund).
Johutt.
Koorwye.
Kuttiwarra.
Mahomedgurh.
Mutwarrah.
Ruttun Mal.
Ali Rajpoor.
Jhaboda.

Jowra.
Kilcheepoor.
Nursinghur.
Rajghur.
Rutlam.
Setamhow.
Sillana.

Gwalior, Districts of—

Amjheera, Augur, Baug, Diktaun, Mundisore, Neemuch, Oojein, Sagore, Shoojawulpore, Sonekutch and — With the several Pergunnahs subordinate thereto, included in the charge of Scindia's Sir Soobah of Malwa.

Bhilsa, Gunj Baroda, Mulharghur, Muxoodunghur, — With the several Pergunnahs subordinate thereto, which form part of the Charge of Scindia's Sir Soobah of Esanghur.

Jalra Patun, Districts of—

Gungrar.
Putch Pahar.
Dug.

Tonk, Districts of—

Pirawa.
Seronje.
Nimbhera.
Meywar.
Pertabghur.
Marwar.
Doongurpore.
Banswarra.
Jhalawar.
Serolie.
Jysulmere.

By the High Court of the North-Western Provinces in—

Gurhwal.
Dholpore.
Bhurtpore.
Ulwur.
Jeypore.
Kerowlee.
Tonk, with the exception of Pirawa, Nimbhera, and Seronje.
Kotah.
Boondee.
Kishengurh.
Bikanere.
Shahpoora.
Rampore.
Gwalior.—The whole of the State, excepting the Sir Soobahship of Malwa, and the Districts under the Sir Soobah of Esanghur enumerated above.

Bundlecund States and Chiefships—

Adjeygurh.
Aleepoora.
Baonee.
Beronda.
Behut.
Behree.
Bhysonda.
Bijawur.
Bijna.
Chirkharee.
Chutterpoor.
Dhoorwye.
Dhuttiah.
Gerowlee.
Gourihar.
Jignee.
Jussoo.
Kamta Rijola.
Kotee.
Kunniadhanna.
Logassee.
Myhere.
Nagode.
Nyagoan Rebai.
Oorcha.
Puiharee Bunka.
Pahara Chowbey.
Paldeo.
Punna.
Rewah.
Sohawul.
Sumpthur.
Sureela.
Tiraon
Toni Futtehpoor.
Holkar's District of Alumpoor.

ACT No. XVIII. OF 1862.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 1st May 1862).

An Act to repeal Act XVI. of 1852 in those parts of British India in which the Indian Penal Code is in force, and to re-enact some of the provisions thereof with amendments, and further to improve the administration of Criminal Justice in Her Majesty's Supreme Courts of Judicature.*

Preamble.

Whereas, in consequence of the passing of the Indian Penal Code, many of the provisions of Act XVI. of 1852 *(for further improving the administration of Criminal Justice in Her Majesty's Courts of Justice in the territories of the East India Company)* have become inapplicable, and others require amendment, and it is expedient to repeal the said Act, and, pending the preparation of a Code of Criminal Procedure for Her Majesty's Supreme* Courts of Judicature, to re-enact some of the provisions of the said Act, and to make further provision for the administration of Criminal Justice in such Courts; It is enacted as follows :—

Court may amend certain variances not material to the merits of the case, and by which the defendant cannot be prejudiced in his defence, and may either proceed with or postpone the trial to be had before the same or another Jury.

I. Whenever, on the trial of an indictment for an offence, there shall appear to be a variance between any statement in such indictment and the evidence offered in proof thereof, it shall be lawful for the Court before which the trial shall be had, if it shall consider that by the amendment of the indictment the person indicted will not be prejudiced in his defence on the merits, to order such indictment to be amended according to the proof, by some Officer of the Court or other person, both in that part of the indictment where such variance occurs, and in every other part of the indictment which it may become necessary to amend, on such terms as to postponing the trial if the person indicted apply for a postponement, and ordering the same to be had before the same or another Jury, as such Court shall think reasonable; and after any such amendment the trial shall proceed, whenever the same shall be proceeded with, in the same manner in all respects and with the same consequences, both with respect to the liability of witnesses to be indicted for giving false evidence and otherwise, as if no such variance had occurred. Provided that in any such case, where the trial shall be so postponed as aforesaid, it shall be lawful for such Court to respite the recognizances of the prosecutor and witnesses, and of the person indicted, and his surety or sureties (if any), in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence respectively, and the person indicted shall be bound to attend to be tried at the time and place to which such trial shall be postponed, without entering into any fresh recognizances for that purpose, in such and the same manner as if they were originally bound by their recognizances to appear and prosecute, or give evidence at the time and place to which such trial shall be so postponed. Provided

* Now High Courts in Presidency Towns.

also that, where any such trial shall be ordered to be had before another Jury, the Crown and the person indicted shall respectively be entitled to the same challenges as they were respectively entitled to before the first Jury was sworn.

Act XIII. of 1865, Section 7, enacts that, "in Act XVIII. of 1862 the word 'indictment' shall be understood to include the word 'charge,' and all the provisions of the said Act shall apply to charges recorded as aforesaid (*i. e*, as in Sections 3, 4, Act XIII. of 1865) and the trial of such charges." By Section 4 of that Act, the Clerk of the Crown (if he considers it necessary or expedient so to do) is empowered to amend, alter, or add to the charge upon which a person may have been committed or held to bail for trial before a High Court. If a charge appear to the Judge of the High Court, who would in ordinary course try the same, to be clearly unsustainable, an entry to that effect may be made on the charge by such Judge, and shall have the effect of a *nolle prosequi*.—See S. 8.

On trial for criminal breach of trust and other offences, if the offence be theft, the Court may order indictment to be amended.

II. If, upon the trial of any person charged with the offence of criminal breach of trust under Section 405 of the Indian Penal Code, or the offence of cheating, and thereby dishonestly inducing the person deceived to deliver property under Section 420 of the said Code, or of criminal breach of trust as a carrier, wharfinger, or warehouse keeper under Section 407 of the said Code, evidence shall be given to prove that such person took the property in question in any such manner as to amount to the offence of theft under Section 378 of the said Code, the Court may order the indictment* to be amended under the provisions of Section 1 of this Act.

Similar power of amendment in cases of criminal breach of trust as a clerk or servant.

III. If, upon the trial of any person charged with the offence of criminal breach of trust as a clerk or servant under Section 408 of the Indian Penal Code, evidence shall be given to prove that such person took the property in question in any such manner as to amount to the offence of theft under Section 378 of the said Code, or the offence of theft as a clerk or servant of property in possession of his master under Section 381 of the said Code, the Court may order the indictment* to be amended under the provisions of Section 1 of this Act.

Similar power of amendment in cases of theft or of theft in a building, tent, or vessel.

IV. If, upon the trial of any person charged with the offence of theft under Section 378 of the Indian Penal Code, or the offence of theft in a building, tent, or vessel under Section 380 of the said Code, evidence shall be given to prove that, in respect of the property stated in the indictment,* such person was guilty of the offence of dishonest misappropriation of property under Section 403 of the said Code, or the offence of criminal breach of trust under Section 405 of the said Code, the Court may order the indictment* to be amended under the provisions of Section 1 of this Act.

Similar power of amendment in cases of theft as a clerk or servant.

V. If, upon the trial of any person charged with the offence of theft as a clerk or servant of property in the possession of his master under Section 381 of the Indian Penal Code, evidence shall be given to prove that such person was guilty of the offence of dishonest misappropriation of property under Section 403 of the said Code, or the offence of dishonest misappropriation of property possessed by a deceased person at the time of his death under Section 404 of the said Code, or of such dishonest misappropriation under the said Section

* Act XIII. of 1865 declares that "in Act XVIII. of 1862, the word 'indictment' shall be understood to include the word 'charge,' and all the provisions of the said Act shall apply to charges recorded as aforesaid" (*i. e.*, in Ss. 3 and 4) "and the trial of such charges."

404, the offender being at the time of the person's decease employed by him as a clerk or servant, or the offence of criminal breach of trust under Section 405 of the said Code, or the offence of criminal breach of trust as a clerk or servant under Section 408 of the said Code, in respect of the property stated in the indictment, the Court may order the indictment* to be amended under the provisions of Section 1 of this Act.

Verdicts and judgments valid after amendments.

VI. Every verdict and judgment which shall be given after the making of any amendment under the provisions of this Act, shall be of the same force and effect in all respects as if the indictment* had originally been in the form in which it is after such amendment shall have been made.

Records to be drawn up in amended form, without noticing the amendments.

VII. If it shall become necessary at any time, for any purpose whatsoever, to draw up a formal record in any case where any amendment shall have been made under the provisions of this Act, such record shall be drawn up in the form in which the indictment* is after such amendment shall have been made, without taking any notice of the fact of such amendment having been made.

Form of indictment in cases of theft.

VIII. In an indictment* for theft the person indicted may be charged with having dishonestly taken the property stated in the indictment* out of the possession of the person mentioned therein without that person's consent, and in support of such allegation it shall be sufficient to prove that the person indicted, intending to take dishonestly such property out of the possession of the person mentioned in the indictment,* without that person's consent, moved that property in order to such taking.

The means by which the injury was inflicted need not be specified in indictments for murder and culpable homicide.

IX. In an indictment* for murder or culpable homicide not amounting to murder, or for abetting murder or culpable homicide not amounting to murder, or for attempting to commit murder, which shall be preferred after this Act shall come into operation, it shall not be necessary to set forth the manner in which, or the means by which, the death of the deceased was caused or attempted to be caused.

Form of indictment in cases of murder.

X. In an indictment* for murder it shall be sufficient to state that the person charged with the offence did murder the deceased by doing an act with the intention of causing the death of a human being, or, as the case may be, by doing an act with the intention of causing such bodily injury to the deceased as the offender knew to be likely to cause the death of the deceased, or by doing an act with the intention of causing bodily injury to some person, and that the bodily injury intended to be inflicted was sufficient, in the ordinary course of nature, to cause death, or by doing an act knowing it to be so imminently dangerous that it must in all probability cause the death of a human being or such bodily injury as was likely to cause the death of a human being, and committing such act without any excuse for incurring the risk of causing death or such injury as aforesaid, and in any indictment* for abetting murder or for attempting to commit murder, it shall be sufficient to state that the person

* Act XIII. of 1865 declares that "in Act XVIII. of 1862, the word 'indictment' shall be understood to include the word 'charge,' and all the provisions of the said Act shall apply to charges recorded as aforesaid" (*i. e.*, as in Ss. 3 and 4) and the trial of such charges."

charged with the offence abetted the murder of the deceased or attempted to murder the deceased, as the case may be.

Upon indictment for murder, Jury may find the accused guilty of culpable homicide not amounting to murder.

XI. Upon an indictment* for murder, the Jury may find the person charged with the offence not guilty of murder but guilty of culpable homicide not amounting to murder.

Upon indictment for murder, Jury may find the accused guilty of concealing, or endeavouring to conceal, the birth of a child.

XII. Upon an indictment* for the murder of a child, the Jury may find the person indicted not guilty of murder, but guilty of intentionally concealing or endeavouring to conceal the birth of such child under Section 318 of the Indian Penal Code, and the person so found guilty shall be liable to be punished under the said Section of the said Code.

Not necessary to specify the particular kind of grievous hurt.

XIII. It shall not be necessary in an indictment* for voluntarily causing grievous hurt to specify the particular kind of grievous hurt.

Provision for cases of trial for causing grievous hurt and other similar offences.

XIV. Upon an indictment* for voluntarily causing grievous hurt or for voluntarily causing hurt to any person, or for an offence under Section 336, 337, or 338 of the Indian Penal Code, the person indicted shall not be entitled to be acquitted upon the ground that the hurt caused the death of the person injured, or that the person indicted was guilty of culpable homicide.

Form of indictment in cases respecting instruments or documents.

XV. In an indictment* in which it shall be necessary to mention any instrument or document, or to make an averment or allegation respecting any instrument or document, it shall be sufficient to describe such instrument or document by any name or designation by which the same is usually known, or by the purport thereof, without setting out any copy or *fac-simile* thereof, or otherwise describing the same or the value thereof.

Intent to defraud particular person need not be alleged or proved.

XVI. In an indictment* in which it shall be necessary to allege an intent to defraud, it shall not be necessary to allege or prove an intent to defraud any particular person, but it shall be sufficient to allege and prove an intent to defraud.

A party indicted for an offence may be found guilty of an attempt to commit the same, and shall be liable to the same consequences as if charged with and convicted of the attempt only. No person so tried to be afterwards prosecuted for the same.

XVII. If, on the trial of any person charged with any offence it shall appear to the Jury upon the evidence that the person charged did not complete the offence charged, but was guilty of an offence within the meaning of Section 511 of the Indian Penal Code by attempting to commit such offence, or to cause such offence to be committed, and in such attempt doing an act towards the commission of such offence, such person shall not by reason thereof be entitled to be acquitted, but the Jury shall be at liberty to return as their verdict that the person accused is not guilty of the offence charged, but is guilty of an attempt to commit the same within the meaning of Section 511 of the Indian Penal Code, and the offender so found guilty shall be liable to be punished in the same manner as if he had been convicted upon an indictment* framed under the said Section for attempting to commit the particular offence charged in the indictment;* and no

* Act XIII. of 1865 declares that in Act XVIII. of 1862, the word 'indictment' shall be understood to include the word 'charge,' and the provisions of the said Act shall apply to charges recorded as aforesaid" (*i. e.*, as in Ss. 3 and 4) "and the trial of such charges."

person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the offence for which he was so tried.

If person indicted for criminal misappropriation be proved guilty of theft.

XVIII. If, upon the trial of any person indicted* for criminal misappropriation of property, it shall be proved that he was guilty of committing theft of such property, he shall not by reason thereof be entitled to be acquitted of the offence charged against him.

Upon an indictment for jointly receiving, persons guilty of separately receiving may be convicted.

XIX. If, upon the trial of two or more persons indicted* for jointly receiving stolen property, it shall be proved that one or more of such persons separately received any part of such property, it shall be lawful for the Jury to convict upon such indictment* such of the said persons as shall be proved to have received any part of such property.

Abettor of an offence may be indicted and punished in the absence of the principal.

XX. A person may be indicted* and punished for abetting an offence which has been committed in consequence of the abetment, notwithstanding the person who committed the offence shall not have been indicted* or found guilty, or shall not be in custody or amenable to justice, and every abettor of an offence may be indicted, tried, and punished for the abetment as a substantive offence, and may be tried either jointly with the principal offender or separately, and punished by any of Her Majesty's Supreme† Courts of Judicature which would have power to try the principal offender, or which would have power to try the abettor if he had committed the offence himself either in the place in which he is guilty of the abetment, or in the place in which any act shall have been committed in pursuance of the abetment.

Receiver of stolen property may be indicted and punished in the absence of the principal.

XXI. A person may be indicted* and punished for dishonestly receiving or retaining stolen property, notwithstanding the person by whose offence the possession of such property shall have been transferred, or who shall have criminally misappropriated such property or committed criminal breach of trust in respect thereof, shall not have been found guilty of such offence, or shall not be in custody or amenable to justice.

Insertion of several counts in the same indictment against the same person.

XXII. It shall be lawful to insert severals counts in the same indictment* against the same person for different offences. But the Judge, before whom the person indicted shall be tried, may direct that any one or more of the counts shall be treated as a distinct indictment* or indictments,* and that the person indicted shall be tried thereupon in the same manner as if such count or counts had been in separate and distinct indictments.*

If the property alleged in an indictment for theft appear to have been taken at different times, prosecutor need not elect, unless where more than three takings or more than six months between the first and last taking.

XXIII. If, upon the trial of an indictment* for theft it shall appear that the property alleged in the indictment* was taken or moved, at different times, the prosecutor shall not by reason thereof be required to elect upon which taking or moving he will proceed, unless it shall appear that there were more than three takings or movings, or that more than the space of six calendar months elapsed between the first and the last of such takings or

* Act XIII. of 1865, S. 7, declares that "in Act XVIII. of 1862, the word 'indictment' shall be understood to include the word 'charge,' and all the provisions of the said Act shall apply to charges recorded as aforesaid" (*i. e.*, as in Ss. 3 and 4) "and the trial of such charges."

† Now High Courts in Presidency Towns.

movings, and in either of such last mentioned cases, the prosecutor shall be required to elect to proceed for such number of takings or movings, not exceeding three, as shall appear to have taken place within the period of six calendar months from the first to the last of such takings or movings.

Form of indictment for giving or fabricating false evidence, &c.

XXIV. In an indictment* for giving or fabricating false evidence, or for using or attempting to use false or fabricated evidence, or for any offence which by the Indian Penal Code is declared to be punishable in the same manner as the offence of intentionally giving false evidence, or for abetting or attempting to commit any of the offences aforesaid, it shall be sufficient to set forth the substance of the offence charged, without setting out any part of any proceeding either in law or in equity, and without setting forth the commission or authority of the Court or person before whom such offence was committed.

Coin and Bank or Government Notes may be described simply as money.

XXV. In an indictment* in which it shall be necessary to make any averment as to any money, or any note of any Bank, or any note of Government payable on demand, or which by any law is or shall be declared to be a legal tender, it shall be sufficient to describe such money or note simply as money, without specifying any particular coin or Bank or other note, and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any such note as aforesaid, although the particular species of coin of which such amount was composed, or the amount, number, or other particulars of the note, shall not be proved, and in cases of obtaining money or any such note or notes as aforesaid by cheating, by proof that the offender obtained any piece or pieces of coin, or any such note or notes, or any portion thereof or of the value thereof by cheating, although such piece or pieces of coin or note or notes may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to any other person or persons, and such part shall have been returned accordingly.

Absence of general exceptions under the Penal Code to be assumed.

XXVI. It shall not be necessary to allege in an indictment* any circumstances for the purpose of showing that the case does not come, nor shall it be necessary to allege that the case does not come, within any of the general exceptions contained in Chapter IV. of the Indian Penal Code, or within the exceptions contained in Section 136, Section 300, Section 323, Section 324, Section 325, Section 326, Section 375, or Section 499 of the said Code, but every charge shall be understood to assume the absence of all such circumstances, and it shall not be necessary on the part of the prosecutor to prove at the trial the absence of such circumstances in the first instance; but the person indicted* shall be entitled to give evidence of the existence of any such circumstances and evidence in disproof thereof may then be given on the part of the prosecutor.

Evidence as to general exception.

It is remarkable that the Code of Criminal Procedure (S. 237) requires in charges for offences to be enquired into or determined by local Courts more than is necessary in charges for offences to be tried by High Courts.

* Act XIII. of 1865 declares that "in Act XVIII. of 1862, the word 'indictment' shall be understood to include the word 'charge,' and the provisions of the said Act shall apply to charges recorded as aforesaid" (*i. e.*, as in Ss. 3 and 4) "and the trial of such charges."

XXVII. In proving the existence of circumstances as a defence under the 2nd, 3rd, 5th, 6th, 7th, 8th, 9th, or 10th exception to Section 499 of the Indian Penal Code, good faith shall be presumed, unless the contrary appear.

Good faith to be presumed in certain cases.

XXVIII. In every indictment, words used in describing an offence, shall be deemed to have been used in the sense attached to them by the Indian Penal Code.

Words in indictments to be taken in the sense of the Penal Code.

XXIX. Any person accused of murder, or of culpable homicide not amounting to murder, may be dealt with, tried, and punished by any of Her Majesty's Supreme* Courts of Judicature, if the act which shall have caused the death shall have been committed wholly or partly within the local limits of the jurisdiction of such Court, or if the death shall have taken place within such local limits, in the same manner as if both the act had been committed and the death had taken place within such local limits.

Trials for murder or culpable homicide, if the act which caused death, or the death took place within the jurisdiction.

XXX. Any person accused of an offence may be dealt with, tried, and punished by any of Her Majesty's Supreme* Courts of Judicature, if the offence shall have been either commenced or completed within the local limits of the jurisdiction of such Court, in the same manner as if the offence had been wholly and entirely committed within such local limits.

Supreme Court may deal with offence either commenced or completed within local jurisdiction.

XXXI. Whenever the offence of which any person shall be accused, shall consist of anything which has been done and of any consequence which has ensued therefrom, the person accused may be dealt with, tried, and punished by any of Her Majesty's Supreme* Courts of Judicature, if either the act shall have been done or the consequence shall have ensued within the local limits of the jurisdiction of such Court, in the same manner as if both the act had been done and the consequence had ensued within such local limits.

Offence may be dealt with if either the act was done or the consequence ensued within the jurisdiction.

XXXII. Whenever a person shall be accused of any offence punishable under Section 411, 412, 413, or 414 of the Indian Penal Code in respect to the receiving or retaining of stolen property, such person may be dealt with, tried, and punished by any of Her Majesty's Supreme* Courts of Judicature, if the offence by which the possession of the property shall have been transferred, shall have been committed either wholly or in part within the local limits of the jurisdiction of such Court, or if any of the stolen property shall have been received or retained by the person accused within such local limits.

Receiving stolen property, when part only of the offence is committed within the jurisdiction.

XXXIII. If any person shall be accused of any offence under Section 424 of the Indian Penal Code of dishonestly or fraudulently concealing or removing any property of himself, or of any other person, or of dishonestly or fraudulently assisting in the concealment or removal thereof, such person may be dealt with, tried, and punished by any of Her Majesty's Supreme* Courts of Judicature, if the property shall have been concealed or removed in any

Similar provision as to dishonest removal or concealment of property.

* Now High Courts in Presidency Towns.

place within the local limits of such Court or shall have been removed from any place within such local limits.

Provision for cases on the boundaries or near the boundaries of local jurisdiction.

XXXIV. If any act shall have been committed or the consequence of any act shall have ensued on the boundaries of the local jurisdiction of such Court or so near to such boundaries as to render it doubtful whether such act was committed or such consequence ensued within such local limits or not, such act or consequence may for all purposes be stated, deemed, and taken to have been committed or to have ensued within such local limits.

Provision for the case of offences committed on a journey or voyage.

XXXV. If any person shall be accused of any offence alleged to have been committed on a journey or on any voyage in British India, such person may be dealt with, tried, and punished by any of Her Majesty's Supreme* Courts of Judicature, if any part of the journey or voyage shall have been performed within the local limits of the jurisdiction of such Court.

Escape from lawful custody under sentence.

XXXVI. If any person shall escape from any custody in which he is lawfully detained in pursuance of a sentence of a Court of Justice or by virtue of a commutation of such sentence, or shall be charged with any offence declared to be punishable under Section 227 of the Indian Penal Code or under Section 12 of Act XXIV. of 1855 *(relating to penal servitude)*, the person accused may be dealt with, tried, and punished by any of Her Majesty's Supreme* Courts of Judicature, if such person shall be apprehended and re-taken within the local limits of the jurisdiction of such Court, or if he was formerly tried by such Court, or, in the case of an escape from custody, if he shall have escaped from custody in any place within such local limits.

Justices of Peace may deal with such offences.

XXXVII. Every Justice of the Peace shall have power to deal with any person charged with an offence for which he is liable under this Act to be tried by one of Her Majesty's Supreme* Courts of Judicature, in the same manner as if such offence had been wholly and entirely committed within the local limits of such Court.

A former conviction or acquittal before a competent Court to be a bar to subsequent trial or conviction.

XXXVIII. A former conviction or acquittal before a Court of competent jurisdiction of any offence hereby made punishable by Her Majesty's Supreme* Courts of Judicature, shall be a bar to any subsequent trial or conviction for the same offence.

Certain provisions of 9th Geo. 4 c. 74 shall be deemed to apply to and include offences punishable under Penal Code.

XXXIX. The provisions of Sections 10, 12, 13, 14, 15, 16, 18, and 23 of the 9th Geo. 4 c. 74, entitled "An Act for improving the administration of Criminal Justice in the East Indies," shall be deemed to apply to and to include any offence punishable under the Indian Penal Code. Section 5 of the said Act shall be deemed to include murder, or culpable homicide not amounting to murder; and the words felony or misdemeanor in Section 110 of the said Act shall be deemed to extend to and include any offence declared to be punishable under the Indian Penal Code, by means of or in consequence of which the possession of property shall have been transferred.

* Now High Courts in Presidency Towns.

The power of the High Court as a Court of original Criminal jurisdiction to order the payment of a fine to the prosecutor by way of compensation was raised and decided in the case of Reg. *vs.* Hosein Jan and another (April 12, 1867).

Mr. Justice Norman stated the facts as follows:—

It was proved at the trial that the prisoners stole a quantity of gold ornaments belonging to the prosecutor, and, under the pretence that they wished the ornaments to be made up again, induced a goldsmith to melt them down into an ingot, which they took away with them. On their apprehension on the same afternoon, or the following day, a sum of Rs. 142-7-6 was found on the prisoners, but the ingot could not be traced.

It appeared to Mr. Justice Norman that although there was no positive proof on the point, in all probability this money represented the proceeds of the sale of the ingot. He imposed a fine to that amount on the prisoners, and stated that, but for the doubt expressed by Mr. Justice Morgan, in the Queen *vs.* Goluck Doss, 1 Hyde's Reports, 282, he would have ordered the fine to be paid over to the prosecutor.

The Advocate General, on behalf of the Crown, showed cause against awarding the fine to the prosecutor. He contended that the Court had not the power sought to be exercised. He refered to the Charter of the Supreme Court of 1774, S. 29; 3 and 4 Wm. IV., c. 85, S. 2; 16 and 17 Vic., c. 95, S. 27; 21 and 22 Vic., c. 106, Ss. 64 and 2.

Peacock, C. J.—By S. 29 of the Charter of the late Supreme Court, all fines imposed by that Court were reserved to the Crown; but the Court was empowered to make such satisfaction to prosecutors as to the said Court should seem reasonable and fit, out of any such fines.

By the 16 and 17 Vic., c. 95, S. 27, it was declared that all fines imposed by any Court of Justice in India belonged to the East India Company for her Majesty for the service of the Government of India.

It appears to the Court that it was not intended by that Act to take away the power of the Supreme Court to make satisfaction to prosecutors out of fines to be imposed by that Court. All that it was intended to do was to transfer to the East India Company the fines which belonged to the Crown, subject to all the powers which the Court had to make satisfaction out of them.

It was contended that the power to make satisfaction out of fines extending to cases of misdemeanor, in which prosecutors might have sustained personal injury, as in the case of assaults, &c.; but the words of S. 29 are general, and it appears to us that it was intended that the Court should have power to award satisfaction in all cases in which they had, or might by any law for the time being in force have, power to impose a fine. We are further of opinion that the power to make satisfaction is not limited to personal damage, but extends also to any damage which a prosecutor may have sustained by having his property stolen from him.

By 9 Geo. 4, c. 74, S. 43, all sums of money forfeited upon summary conviction for the return of property stolen are to be paid to the party aggrieved, except in cases in which he has been examined as a witness. If the construction of S. 29 of the Charter were to receive the construction contended for, prosecutors might be compensated for property stolen if the offenders are summarily convicted, and here they could not be compensated out of a fine imposed upon conviction by the High Court. We are of opinion that the High Court has power to award, by way of satisfaction to a prosecutor, the whole or any portion of a fine imposed upon conviction of a felony before the Court in the exercise of its original Criminal jurisdiction.

Norman, J.—I am exactly of the same opinion. There is no rule of construction better established than that a later statute is not to be treated as repealing by implication the provisions of a former enactment, unless they are wholly inconsistent, and cannot stand together. The object of the Charter of the 26th of March, 1774, was to establish a Supreme Court of Judicature, and to regulate its powers. By the 29th Clause authority was given to it to make satisfaction to prosecutors out of fines imposed by it. The 16 and 17th Vic., c. 95, was an Act to provide for the Government of the territories in the possession of the East India Company. By the 29th Section the fines incurred by the sentence or order of any Court of Justice within the territories (which under the Charter had been reserved to the Crown) were declared to belong to the East India Company, in trust for Her Majesty for the service of the Government of India.

It is perfectly clear that in passing that Act, the Legislature was not dealing with the Judicial powers of the Supreme Court, and therefore I think it clear that the enactment must be construed as making over to the East India Company the right to fines, &c., as Her Majesty had it, *viz.*, subject to all powers of the Supreme Court. Accordingly I direct that the fines be paid over to the prosecutor.

No indictment to be held insufficient for immaterial errors.

XL. No indictment* for any offence shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears by the record," or of the words "with force and arms," or of the words "against the peace," nor for the insertion of the words "against the form of the statute," instead of "against the form of the statutes," or *vice versâ*, nor because any person mentioned in the indictment* is designated by a name of Office or other description or appellation instead of his proper name, nor for omitting to state the time at which the offence was committed in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment* or on an impossible day or on a day that never happened, nor for want of a proper or perfect *venue*, nor for want of a proper or formal conclusion, nor for want of or imperfection in the addition of any defendant, nor for want of the statement of the value or price of any matter or thing, or the amount of damage, injury, or spoil in any case where the value or price or the amount of damage, injury, or spoil is not of the essence of the offence.

Formal objections to indictments shall be taken before Jury are sworn. Court may amend any formal defect.

XLI. Every objection to an indictment* for uncertainty or for any formal defect apparent on the face thereof shall be taken by demurrer or motion to quash such indictment before the Jury shall be sworn, and not afterwards, and every Court before which any objection shall be taken by demurrer or motion to quash for any formal defect may, if it be thought necessary, cause the indictment* to be forthwith amended in such particulars by some Officer of the Court or other person, and thereupon the trial shall proceed as if no such defect had appeared.

No traverse allowed, but the Court may postpone trial.

XLII. No person prosecuted shall be entitled to traverse or postpone the trial of any indictment* found against him at any Session of Oyer and Terminer or Session of Gaol delivery; provided always that if the Court, upon the application of the person so indicted, or otherwise, shall be of opinion that he ought to be allowed a further time either to prepare for defence or otherwise, such Court may adjourn the Sessions to any subsequent day, and may adjourn the trial of such person to such day or to the next subsequent Session, upon such terms as to bail or otherwise as to such Court shall seem meet, and may respite the recognizances of the prosecutor and witnesses accordingly, in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence at such subsequent day or Session without entering into any fresh recognizance for that purpose.

Provision as to plea of autrefois convict or autrefois acquit.

XLIII. In any plea of *autrefois convict* or *autrefois acquit*, it shall be sufficient for the person accused to state that he has been lawfully convicted or acquitted (as the case may be) of the offence charged in the indictment.

* Act XIII. of 1865, S. 7, declares that "in Act XVIII. of 1862, the word 'indictment' shall be understood to include the word 'charge,' and all the provisions of the said Act shall apply to charges as recorded aforesaid" (*i. e.*, as in Ss. 3 and 4) "and the trial of such charges."

XLIV. A charge of an offence under Section 497 of the Indian Penal Code shall not be instituted except by the husband of the woman.

Prosecution for adultery not to be instituted except by the husband.

XLV. A charge of an offence under Section 498 of the Indian Penal Code shall not be instituted except by the husband of the woman, or by the person having care of such woman on behalf of her husband.

Prosecution for enticing away a married woman not to be instituted except by husband or person in charge of the woman.

XLVI. Upon the trial of an indictment* for either of the offences mentioned in the last two preceding Sections, it shall be necessary to prove that the charge was instituted by the husband of the woman if the charge be made under Section 497 of the Indian Penal Code, or by the husband of the woman, or by the person having care of such woman on behalf of her husband, if the charge be made under Section 498 of the said Code, and in either case that the indictment* is prosecuted by such husband or other person as the case may be, and on failure of such proof the indictment* shall be quashed and the person accused shall be discharged.

On trial of offence under last two Sections, proof necessary of husband or person in charge of woman having instituted the charge.

XLVII. Whenever any person shall be sentenced by any of Her Majesty's Supreme† Courts of Judicature to rigorous imprisonment, or to imprisonment with hard labor, or to solitary confinement, he shall be imprisoned in the House of Correction, whether such House of Correction be under the control of the Sheriff or not.

Person sentenced to rigorous confinement may be imprisoned in House of Correction.

XLVIII. Whenever any person shall be sentenced by any of Her Majesty's Supreme† Courts of Judicature to transportation or penal servitude, such person shall be kept in the House of Correction as the place of intermediate custody, whether such House of Correction be under the control of the Sheriff or not.

Person sentenced to transportation or penal servitude may be kept in the House of Correction.

XLIX. If the Sheriff be not the Officer in whom the control of the House of Correction is vested, he shall cause any person sentenced, as mentioned in either of the last two preceding Sections, to be delivered to the Officer in whom the control of the House of Correction is vested, or to the keeper of such House of Correction, together with a warrant to be signed by a Judge of the said Supreme† Court authorizing the detention of such person. Such Officer or keeper shall be bound to receive the person so delivered over to his custody, and they both shall be responsible for the safe custody of such person.

If the Sheriff be not the keeper of the House of Correction, how he shall proceed.

L. All Constables and Police Officers are hereby empowered to aid and assist the Sheriff in carrying to the House of Correction any person sentenced as aforesaid.

All Constables, &c., bound to assist.

LI. If the Sheriff be not the Officer in whom the control of the House of Correction is vested, he shall be absolved from all responsibility in respect of the custody of any person sentenced as aforesaid, from the time such person shall be delivered to

Sheriff absolved from responsibility.

* Act XIII. of 1865, S. 7, declares that "in Act XVIII. of 1862, the word 'indictment' shall be understood to include the word 'charge,' and all the provisions of the said Act shall apply to charges recorded as aforesaid" (*i. e.*, as in Ss. 3 and 4) "and trial of such charges."

† Now High Courts.

the custody of the Officer in whom the control of the House of Correction is vested, or to the keeper of such House of Correction.

Person sentenced by Justice of Peace to rigorous imprisonment or hard labor may be committed to the House of Correction.

LII. Whenever any person shall be sentenced by a Justice of the Peace or Police Magistrate to rigorous imprisonment, or to imprisonment with hard labor, for any offence committed within the local limits of the jurisdiction of any of Her Majesty's Supreme* Courts of Judicature, the person so sentenced shall be committed to the custody of the Officer in whom the control of the House of Correction is vested, whether such House of Correction be under the control of the Sheriff or not, or of the keeper of such House of Correction, and such Officer and keeper shall be responsible for the safe custody of such person.

Provision for persons now in the House of Correction.

LIII. From and after the passing of this Act, all persons who are confined at the date of the passing of this Act in the House of Correction, whether under the sentence of any of Her Majesty's Supreme* Courts of Judicature, or of any Justice of the Peace or Police Magistrate, shall be considered to be and shall remain in the custody of the Officer in whom the control of such House of Correction is vested, whether such Officer be the Sheriff or not, or of the keeper of such House of Correction, and such Officer and keeper shall be responsible for the safe custody of all such persons.

Commencement of Act at Fort William in Bengal.

LIV. This Act shall commence and take effect in Her Majesty's Supreme* Court of Judicature at Fort William in Bengal, or in any Court to which the whole or any part of the Criminal jurisdiction of that Court shall be transferred, from the time of the passing of the Act, and shall, as far as the same is applicable, extend to all indictments† and proceedings in respect of any offence punishable under the Indian Penal Code, which have been or shall be presented or commenced in the said Court or in any other Court to which the whole or any part of the Criminal jurisdiction of such Court shall be transferred.

Commencement of Act at Madras and Bombay.

LV. This Act shall commence and take effect in Her Majesty's Supreme* Courts of Judicature at Fort St. George and Bombay respectively, or in any Courts to which the whole or any part of the Criminal jurisdiction of those Courts respectively shall be transferred, from the time at which it shall be notified in the Official Gazette by an order of the Governor in Council of Fort St. George and Bombay respectively, that the Act is to take effect in such Courts; and from such time the provisions of the Act shall, so far as the same is applicable, extend to all indictments† and proceedings in respect of any offence punishable under the Indian Penal Code, which have been or shall be presented or commenced in the said Courts or in any other Courts to which the whole or any part of the Criminal jurisdiction of such Courts shall be transferred.

Act XVI. of 1852 how far repealed.

LVI. From the time at which this Act shall take effect in any of Her Majesty's Supreme* Courts of Judicature as provided in the last two preceding Sections, Act XVI of 1852 is repealed so far as it relates to indictments† and proceedings in such Court, except as to offences not punishable under the Indian Penal Code.

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* Now High Court.

† Act XIII. of 1865, S. 7, declares that "in Act XVIII. of 1862, the word 'indictment' shall be understood to include the word 'charge,' and all the provisions of the said Act shall apply to charges recorded as aforesaid" (*i. e.*, as in Ss. 3 and 4) "and trial of such charges."

LVII. In the construction of this Act, unless where a contrary intention appears from the context, the word "indictments"* shall be understood to include information, inquisition, or presentment, as well as indictment,* and also any plea, replication, or other pleading; and the term "finding of the indictment"* shall be understood to include the taking of an inquisition, the exhibiting of an information, and the making of a presentment; and words importing the singular number or masculine gender shall include several persons and parties as well as one person or party, and females as well as males, and bodies corporate as well as individuals, and several matters and things as well as one matter and thing. Words which refer to acts done shall include illegal omissions. The words "British India" shall denote the territories that are or shall become vested in Her Majesty by the Statute 21 and 22 Vic. c. 106, entitled "An Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore, and Malacca; and the word "property" shall be understood to include goods, chattels, money, valuable securities, and every other matter or thing, whether real or personal, upon or with respect to which any offence may be committed.

Definitions.
"Indictment"
"Finding of the indictment."
Number and gender.
Acts done.
"British India."
"Property."

ACT No. XIII. OF 1865.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 21st March, 1865.)

An Act to amend the procedure of Her Majesty's High Courts of Judicature in the exercise of their original Criminal jurisdiction, and to provide for the exercise of such jurisdiction at places other than the Presidency Towns.

WHEREAS it is expedient to amend the procedure of the High Courts of Judicature at Fort William in Bengal, at Madras, and at Bombay, in the exercise of their original Criminal jurisdiction, and also to provide for the exercise by such Courts of original Criminal jurisdiction under the Commission of the Governor General of India in Council, or of either of the Governors in Council of Madras and Bombay, in places other than the Presidency Towns, or at several such places by way of circuit; It is enacted as follows:—

Preamble.

Preliminary.

I. This Act may be cited as "The High Courts' Criminal Procedure Amendment Act, 1865."

Short title.

II. In this Act, unless there be something repugnant in the subject or context—

Interpretation clause.

"High Court" denotes Her Majesty's High Courts of Judicature at Fort William in Bengal, at Madras, and at Bombay, respectively.

"High Court."

* Act XIII. of 1865, S. 7, declares that "in Act XVIII. of 1862, the word 'indictment' shall be understood to include the word 'charge,' and all the provisions of the said Act shall apply to charges recorded as aforesaid" (*i. e.*, as in Ss. 3 and 4) "and trial of such charges."

"Chief Justice," "Judge," "Registrar," and other words denoting any particular Officer, respectively include any person for the time being authorized to act as such Chief Justice, Judge, Registrar, or other Officer.

"Chief Justice." "Judge," &c.

"Magistrate" denotes any person exercising any of the powers of a Magistrate under the Code of Criminal Procedure, and includes Police Magistrates in any Presidency Town.

"Magistrate."

"Clerk of the Crown" includes, besides such Officer, a Crown Prosecutor, and any Officer specially appointed by the Governor General of India in Council or the Governor in Council of Madras or Bombay to discharge the functions given by this Act to the Clerk of the Crown, in respect of any sittings of a Judge or Judges of the High Court in a place other than the usual place of sitting, or in respect of any sittings of a Barrister under the forty-fourth Section of this Act.

"Clerk of the Crown."

"British India" denotes the Territories which are or may become vested in Her Majesty or her successors under the Statute 21 and 22 Vic., cap. 106, except the Settlement of Prince of Wales' Island, Singapore, and Malacca.

"British India."

Words importing the masculine gender include females: words in the singular number include the plural, and words in the plural number include the singular.

Gender and Number.

Of Charges where the Accused is committed in a Presidency Town.

III. Any Justice of the Peace or Magistrate who shall commit to custody or hold to bail any person for trial before the High Court for an offence committed, or which according to law may be dealt with as if it had been committed within the local limits of its ordinary original Civil jurisdiction, shall, together with all examinations, informations, bailments, and recognizances, now required to be delivered to such Court before the trial, deliver to the Clerk of the Crown a written instrument of charge signed by him, stating for what offence such person is so committed or held to bail.

Charge to be delivered to Clerk of the Crown with commitment within the local limits of the ordinary original Civil jurisdiction.

See Ss. 227-8-9 of the Code of Criminal Procedure for the rules to be followed by a Magistrate and Justice of the Peace.

The Justice of the Peace or Magistrate committing a person for trial to the High Court should be careful to comply with all their formalities, as the omission to deliver to the Clerk of the Crown a written instrument of charge has been held to vitiate a commitment which was quashed.—See note to S. 4.

IV. The Clerk of the Crown shall peruse and consider the charge, and may, if he consider it necessary or expedient so to do, amend, alter, or add to the same. The charge, with such amendments, alterations, or additions, if any, shall be recorded in the High Court, and the person charged shall be entitled to have a copy of such charge, with such amendments, alterations, or additions (if any) gratis.

Clerk of the Crown to consider, and, if he will, to amend, alter, or add to the charge.

Charge with amendments, alterations or additions (if any) to be recorded.

A similar power is by S. 234, Code of Criminal Procedure, conferred on Mofussil Courts. Act XVIII. of 1862, S. 1, should be read with the foregoing Section.

The Calcutta High Court, *per* Markby, *J.*, in the case of Reg. *vs.* Tetooram Shaw, tried on August 7, 1866, on the original Criminal jurisdiction, delivered the following judgment:—

"It is not sufficient that the Committing Magistrate should send merely the deposition of the witnesses and the prosecutor's charge to the Clerk of the Crown, and that the

charges should be framed upon *them*. Whether the prisoner is retained in custody or released on bail, the Committing Magistrate must send to the Clerk of the Crown a definite charge, and upon this must the charge before the Court of Session be framed.

The power given to the Clerk of the Crown is to make alterations, amendments, or additions, and does not extend to making a new charge where none has been delivered by the Magistrate. The charges must be quashed, and the prisoner discharged.

In the case of Reg. *vs.* Hunt, tried by the same Court on May 16, 1867, where the Clerk of the Crown had added a charge upon which the Magistrate had distinctly refused to commit the prisoner, and it was objected by his Counsel that the law did not extend to the framing of an altogether new charge to that on which the prisoner had been committed, Mr. Justice Markby overruled the objection.

The following judgment of Sir Barnes Peacock, *C. J.*, in the case of Reg. *vs.* Nobodeep Chunder Gossamee and another, heard on April 8th, 1868, is important on this subject.

Peacock, C. J.—The prisoner in this case is charged with having committed an offence in Calcutta. The caption of the charge stated that he had been committed to trial before the High Court by W. H. Ryland, Esq., Deputy Magistrate and Justice of the Peace of and for the District of Serampore. At the close of the case for the prosecution it was objected on behalf of the prisoner—

1*st*.—That no proper evidence had been given of any proceeding having been had of the High Court duly directing the preliminary investigation to be made by the Magistrate at Serampore; and

2*nd*.—That no proper evidence had been given of a direction to transfer the trial of the prisoner to this Court, and that acordingly the learned Judge who tried the case should have directed the prisoner to be acquitted.

Nobodeep, the prisoner, had pleaded not guilty, and the question which arises upon this portion of the case is, whether the plea of not guilty of the offence stated in the charge raised any question of fact as to the authority of the Officer who preferred that charge. When by S. 3 Act XIII. of 1865, the Grand Jury was abolished, it was provided that "any "Justice of the Peace or Magistrate who shall commit to custody or hold to bail any person "for trial before the High Court for an offence committed, or which, according to Law, may "be dealt with, as if it had been committed within the local limits of its ordinary original "Civil jurisdiction, shall, together with all examinations, informations, bailments, and "recognizances, now required to be delivered to such Court before the trial, deliver to "the Clerk of the Crown a written instrument of charge signed by him, stating for what "offence such person is so committed or held to bail."

"S. 71 enacts that the Clerk of the Crown shall peruse and consider the charge, and "may consider it necessary or expedient so to do, amend, alter, or add to the same. The "charge, with such amendments, alterations, or additions, if any, shall be recorded in the "the High Court, and the person charged shall be entitled to have a copy of such charge, "with such amendments, alterations, or additions (if any) gratis."

"S. 6 enacts that upon charges recorded as aforesaid, persons committed to custody or "held to bail shall be deemed to have been brought before the High Court in due course of "Law, and (subject to the provisions contained in the 8th Section of this Act) shall be arraigned "at the suit of the Crown, and the verdict shall be recorded thereupon. There is no doubt that this Court had jurisdiction to try the prisoner for the offence committed, if a charge had been made against him by a person authorized to make that charge; and then this Court, being a Court of superior jurisdiction, put the prisoner on his trial upon that charge. It must, in my opinion, be assumed, until the contrary was shewn, that the charge had been preferred by an Officer competent to prefer it; and even if the charge had no caption at all, in my opinion, when he was put up on trial by this Court, it must be assumed that this Court had jurisdiction to try him.

The rule as to jurisdiction is that nothing shall be intended to be out of the jurisdiction of a superior Court but that which specially appears to be so; and, on the contrary, nothing shall be intended to be within the jurisdiction of an inferior Court but that which is so expressly alleged.—Peacock *vs.* Bell and Kendal, 1 Wms. Saund., 75.

S. 3 of Act XIII. of 1865 does not require the Officer making the charge to set forth his jurisdiction, but it merely requires the charge to state for what offence the person is so committed or held to bail: and I am of opinion that the charge would be presumed to be sufficient if the caption had merely stated that a charge had been duly preferred against him; and if that would have been sufficient, it would also have been sufficient if the Court

had stated that the charge had been preferred against him, because, when a superior Court put him on his trial upon a charge preferred against him, it would be presumed that it had been duly preferred. I by no means intend to say that the prisoner would have no remedy if the charge had not been duly preferred, but I am of opinion that, when the prisoner pleaded to the charge, that he was not guilty of the offence stated therein, he raised no question as to whether the charge was duly preferred or not. It is stated in the caption that Mr. Ryland was a Deputy Magistrate and Justice of the Peace for Serampore, but I think that makes no difference with regard to the question now under consideration, which is merely whether proof ought to have been given as to whether Mr. Ryland had authority to send up the charge. If he had no authority to send up the charge, there were two courses open to the prisoner. He might have applied to the Court to quash the charge, bringing to the notice of the Court the facts upon which he contended that the Officer had no jurisdiction to prefer it, or he might have pleaded to the jurisdiction of the Court, showing that Mr. Ryland had no jurisdiction to prefer it, or, if it appeared on the face of the charge and the caption that Mr. Ryland had no jurisdiction to prefer it, he might possibly have demurred. It has been held that objections to the jurisdiction may be taken by demurrer if the objection appears upon the face of the indictment and caption, and that the want of jurisdiction may also be pleaded specially if the defect does not appear on the face of the indictment. But it has been held that from the nature of the plea of want of jurisdiction, it must evidently be pleaded before the general issue, because, by pleading not guilty, the defendant admits the power of the Court to try him, and refers his case to their decision.—See Chitty's Criminal Law, 438, and cases there cited.

The prisoner, therefore, pleading not guilty in his case, admitted the jurisdiction of this Court and of the Jury to try him for the offence, and it was no part of the issue, which the Jury were sworn to try upon the plea of not guilty, whether Mr. Ryland had jurisdiction or not.

I am, therefore, clearly of opinion that the ruling of the learned Judge was right in holding that upon the issue which the Jury had then to try, it was unnecessary to give any evidence with regard to Mr. Ryland's jurisdiction.

The next is whether the learned Judge was right in refusing to arrest the judgment. We are not called upon to arrest the judgment, but to say whether the learned Judge was right or not in refusing to arrest it.

S. 29 of the last Letters Patent ordains that the High Court "shall have power "to direct transfer of any Criminal case or appeal from any Court to any other Court "of equal or superior jurisdiction, and also to direct the preliminary investigation or trial "of any Criminal case by any Officer or Court otherwise competent to investigate or to try "it, though such case belongs in ordinary course to the jurisdiction of some other Officer "or Court."

It has been contended upon this Section that the High Court would have no power to direct the transfer of any Criminal case or appeal from any Court in the Mofussil to the High Court itself; and it is also further contended, upon the force of that argument, that the High Court has no power to direct the preliminary investigation or trial of any Criminal case, in which the offence has been committed in Calcutta, to any Officer or Court who would be competent to investigate or try it, if the offence had been committed in the Mofussil, within the jurisdiction of that Officer.

It appears to me, however, giving the best construction I can to S. 29, that the High Court has power, if in its discretion it thinks right to exercise it, of transferring the trial of any Criminal offence committed in Calcutta to a Mofussil Court which is otherwise competent to try it, or to direct the trial by the High Court of any offence committed in the Mofussil. The trial can only be transferred to a Court or Officer otherwise competent to investigate it. "Competent to investigate it" does not, as it appears to me, include competency as regards local jurisdiction, but only competency with regard to the offender, the nature of the offence, and the punishment.

For instance, the Court could not transfer to the Judge of the 24-Pergunnahs the trial of an offence committed by a European British subject in Calcutta, because the Judge of the 24-Pergunnahs could not have tried the offenders even if the offence had been committed in his own jurisdiction, so the Court could not transfer to a Magistrate in the Mofussil the trial of any offence which, by the terms of the Criminal Procedure Code, can be tried only by a Sessions Judge, because the Magistrate would not be a Court competent to try the offence if committed within his jurisdiction.

If we hold that the Court can transfer the investigation of a case committed in Calcutta to a Mofussil Magistrate otherwise competent to make the preliminary investigation,

I do not see how we can stop short and say that the Court could not direct the trial of that case before an Officer or Court in the Mofussil otherwise competent to try it. The words "to investigate or try it" are coupled in this Section in such a manner that I think if the Court has power to transfer the investigation, it has also power to transfer the trial.

It might be very inconvenient in many cases if the Court had not this power. Suppose two men were indicted for forgery and uttering a forged note, and the evidence tended to show that the forgery was committed on one side of the Circular Road in the District of the 24-Pergunnahs, and that the uttering took place in Calcutta at the Bank of Bengal, it would be very inconvenient that the prisoners should be tried first at Alipore for the forgery, where they might be acquitted on the ground that the note was a genuine one, and that they should afterward be tried in Calcutta and convicted of uttering a forged note, on the ground that it was a forgery. It would be much more convenient that the Court should remove the trial for forgery into this Court, and to have the questions as to the forgery and uttering tried by the same Court. It might be convenient, under certain circumstances, that if an offence should be committed in Calcutta, and the prisoner should escape and be caught in some District in the Mofussil, to allow the Magistrate of the District in which the offender was caught to make the preliminary investigation. The words of the Section, therefore, being sufficiently large, and the convenience greatly in favor of the construction which I am about to put upon this Section, I have no doubt that the High Court would have had power, if they thought fit to exercise it, to have directed the preliminary investigation in this case by Mr. Ryland, the Deputy Magistrate of Serampore. I cannot say the Court did so in the present instance, for the letters have been rejected, and we have no evidence of the fact. I can only say that Mr. Ryland might have had that jurisdiction. The question, then, is, is the indictment bad in arrest of judgment, because it does not appear that the High Court did authorize Mr. Ryland to make the preliminary investigation? It is unnecessary for the Court to determine whether they can take judicial notice that Mr. Ryland was a Justice of the Peace for Bengal, or whether the Court would be bound to ignore that fact even if they issued the commission appointing him, and the Chief Justice had signed it. If it should so happen that the High Court did issue a commission, and the Chief Justice signed it, it would be a great failure of justice that this judgment should be arrested and the prisoner sent to a Justice of th Peace of Calcutta for the purpose of having a new preliminary investigation; and this failure of justice would be the more apparent and glaring if the commission should happen to be provided. In such a case the prisoner must be re-committed for trial, and the time of this Court and of a new Jury would have to be occupied in re-trying him, and the witnessess be again brought from that homes and from their business—some of them perhaps Clerks in the Bank of Bengal—in order to re-prove the guilt of the prisoner: because this Court would not or could not by law take judicial notice of the fact whether Mr. Ryland was or was not a Justice of the Peace for Bengal, though they had appointed him themselves, is not necessary to determine the question, for I have already held that as a Magistrate of Serampore he might have had power conferred upon him to make the preliminary investigation, and, if so, he would be a Magistrate having power to prefer the charge.

If it becomes necessary to decide the points, I should hold that this Court could take judicial notice of the fact whether Mr. Ryland was or was not a Justice of the Peace for Bengal, if, from the record of this Court, it should appear that a commission had issued, as it has, in fact, issued. In fact, I hold that commission in my hand, under my own signature: and it would be monstrous to hold that I cannot take judicial notice of its existence.

I am of opinion that it would be no ground of demurrer or in arrest of judgment if a prisoner were put upon his trial by this Court upon a charge preferred by a Mofussil Magistrate subordinate to this Court, who might have had the power of making the preliminary investigation conferred upon him, although the caption of the charge should not show on the face of it that that jurisdiction had been conferred.

In the case of Knolden *vs.* Reg., 33 C. J. M., c. 219, a case arose in reference to the vexatious indictment.—Act XXIII. and XXIV. Vic., c. 17. S. 1 of that Act enacts that no bill of indictment for conspiracy, among other offences, shall be presented to or found by any Grand Jury, unless some such indictment be preferred under the direction, or with the consent in writing of, a Judge or of the Attorney or Solicitor.

It was held that it was not necessary that the indictment should aver, or that it should be proved before the Petty Jury, that the conditions imposed by that Statute had been performed. The judgment of Blackburn, *J.*, treats the case in a very clear light.

It appears to me that this case is a very important one, with reference to the point as to whether it was necessary for the charge to state whether Mr. Ryland was empowered by this Court to make the preliminary investigation; but even if this case is not a sufficient authority, I apprehend that the only proper course would have been to move the Court to quash the indictment if Mr. Ryland had no jurisdiction, or to plead the want of jurisdiction if the prisoner wished to have the fact tried by the Jury, or, if the objection had appeared on the face of the record, to have raised it by demurrer.

It is said in Chitty's Criminal Law, that the omission in the caption of an indictment of the words "then and there," in the statement of the swearing of the Jury, was formerly held fatal, because without them it did not appear that the oath was taken in the county where the offence is alleged to have been committed; but the law is now otherwise, and it will be no ground for arresting the judgment after special verdict removed by *certiorari*, that the Judge who tried the prisoner is not stated to have been of the *quorum*, that no issue appears on the record, or that the authority of the Justices of Gaol delivery is not stated. The cases are referred to in Chitty's Criminal Law, 1st vol., pp. 661 and 662.

Further, as this is a Court of superior jurisdiction, the want of jurisdiction is not to be presumed. Act XIII. of 1865 does not require the Officer making the charge to state the jurisdiction under which he is acting; and by Section 6 of that Act it is enacted that "upon charges recorded as aforesaid persons committed to custody, (that is, by the Clerk of the Crown,)" "or held to bail, shall be deemed to have been brought before the High Court in due course of law."

Looking at all these grounds, it appears to me that if the indictment ought to set forth in the caption the facts which constituted the jurisdiction of the Officer who made the charge, the omission to state that which ought to be presumed, and which might have been raised by the prisoner, by pleading to the want of jurisdiction, or by motion to quash the charge, would be a mere formal defect, which, under the provisions of S. 41 of Act XVIII. of 1862, ought to be taken by demurrer, and not by motion in arrest of judgment, after the prisoner has pleaded to the charge, and thereby admitted the jurisdiction of the Court to try him. That Section enacts that "every objection to an indictment for uncertainty or for any formal defects apparent on the face thereof shall be taken by demurrer or motion to quash such indictment before the Jury shall be sworn, and not afterwards; and every Court before which any objection shall be taken by demurrer or motion to quash for any formal defects may, if it be thought necessary, cause the indictment to be forthwith amended in such particulars by some Officer of the Court, or other person, and thereupon trial shall proceed as if no such defect had appeared."

If the objection had been taken in this case that Mr. Ryland's jurisdiction did not appear on the face of the record for want of the Court's authority to him as a Magistrate to hold the preliminary investigation, the Court might have made an inquiry into the fact, and if they had found that he had had that authority conferred upon him, or that he was a Justice of the Peace for the whole of Bengal, and therefore might have investigated the charge without such authority, that Court might have ordered the caption of the indictment to be altered, and everything would have been right. If the facts did not exist which conferred jurisdiction upon Mr. Ryland, and the prisoner had wished to have those facts tried by a Jury, he might have pleaded to the jurisdiction. But it appears that the omission to show all the facts which constituted jurisdiction, or the allegation that Mr. Ryland was a Justice of the Peace for Serampore, instead of a Justice of the Peace for Bengal, is no ground for arresting the judgment.

Though Act XVIII. of 1862 speaks of indictments and not of charges, S. 7 Act XIII. of 1865 sets that right, that the present is one of those technical objections which tend to defeat justice, and to which the Court ought not to yield, unless it is compelled to do so by law. Because it enacts that the word "indictment" in Act XVIII. of 1862 shall be understood to include the word "charge," and that all the provisions of Act XVIII. of 1862 shall apply to charges recorded under Act XIII. of 1865, and the trial of such charges. I am of opinion that the learned Judge was right in proceeding to pass sentence, and not yielding to the objection and arresting the judgment, which, unless we believe that the Jury was wrong in the verdict they pronounced, could only have led to a verdict of guilty, upon which the prisoner must have been ultimately sentenced, after a fresh preliminary investigation, and the waste of the time of the Court, of the Jury, and of the witness, who would all have been required to go through the farce of a new trial for the sake of a mere technical objection, the sole tendency of which is to defeat and not to promote the due administration of justice. If the learned Judge had yielded to the objection, he would merely have held out false hopes to the prisoners, which, if the verdict

of the Jury, who tried them is correct, and I see no reason to doubt it, could never have been realized, and which must have ultimately turned out to be a mere delusion.

It appears to me that there is no force in the objection, and that the judgment must stand. The prisoners will be remanded to Jail to undergo the sentence which has been passed upon them.

Accused to have copies of examinations.

V. The person charged shall also be entitled to copies of the examinations of the witnesses upon whose depositions he has been so committed or held to bail, on payment of a reasonable sum for the same, not exceeding one anna for each folio of ninety words.

Effect of charge.

VI. Upon charges recorded as aforesaid, persons committed to custody or held to bail shall be deemed to have been brought before the High Court in due course of law, and (subject to the provisions contained in the eighth Section of this Act) shall be arraigned at suit of the Crown, and the verdict shall be recorded thereupon.

Provisions of Act XVIII. of 1862 as to indictments to apply to charges preferred under this Act.

VII. In Act XVIII. of 1862 *(to repeal Act XVI. of 1852 in those parts of British India in which the Indian Penal Code is in force, and to re-enact some of the provisions thereof with amendments, and further to improve the administration of Criminal justice in Her Majesty's Supreme Courts of Judicature)*, the word "indictment" shall be understood to include the word "charge," and all the provisions of the said Act shall apply to charges recorded as aforesaid, and the trial of such charges.

Nolle prosequi on unsustainable charge.

VIII. When any such charge shall have been recorded in the High Court as aforesaid, and shall, at any time before the person charged is arraigned, appear to the Judge* of the High Court, who would in ordinary course try the same, to be clearly unsustainable, an entry to that effect may be made on the charge by such Judge. Such entry may be made without the fiat of the Advocate General, and shall have the effect of a *nolle prosequi* upon the charge, but shall not operate as an acquittal of the person charged, unless and until three years from the time of making the entry shall have elapsed, at the expiration of which period, if no fresh charge have been brought on the same matter, he shall be considered as having been acquitted.

Of Grand Juries.

After commencement of this Act, Grand Jury not to be summoned.

IX. From and after the date on which this Act shall come into operation, no warrant or precept shall be issued to the Sheriff or other Officer directing him to summon any person to attend and serve as Grand Jurors. All persons who but for this Act would have been exempt from serving on Common Juries shall be liable, except as hereinafter provided, to serve on such Juries.

No one to be charged on the presentment or inquisition of Grand Jurors, unless they have been summoned before the commencement of this Act.

X. No person shall be brought before the High Court on the presentment or inquisition of Grand Jurors, unless such presentment or inquisition shall have been made by Grand Jurors who shall have been duly summoned before this Act comes into force: Provided that if any precept for summoning a Grand Jury shall have been issued for the then next coming Sessions of the High Court, such Grand Jury shall proceed at such Sessions as if this Act had not passed.

Of Juries in Presidency Towns.

XI. Every person tried in a Presidency Town upon a charge of having committed an offence which is punishable with death, or upon any other charge, if a Judge of the High Court shall so order, shall be tried before a Special Jury.

Certain trials to be held before Special Jurors.

XII. The Jurors' Book for the year current, when this Act comes into force, shall be taken as containing a correct general list of persons qualified and liable to serve as Jurors under this Act: and those persons whose names are entered in the said Jurors' Book as being privileged to serve on Grand or Special Juries only, shall be deemed to be persons privileged and liable to serve only as Special Jurors under this Act: and a list of such last-mentioned persons, to be called the "Special Jurors' List," shall forthwith, and subject to such rules as shall be prescribed by the High Court, be prepared by the Clerk of the Crown or such Officer as the Chief Justice of the High Court shall direct.

The Jurors' Book for the current year to be taken as giving the first list of Jurors and Special Jurors.

XIII. The number of persons included in the "Special Jurors' List," prepared as in the last preceding Section is provided, shall be permitted gradually from year to year to diminish, until the whole number of names remaining on such list shall not exceed two hundred: and no new name shall be added to such list until the number shall have been so diminished by the death or change of residence of the persons originally included in the list, or by other loss of such qualification as gave them the privilege of serving only as Grand or Special Jurors. After the number shall once have been reduced as aforesaid, the names of not more than two hundred persons shall ever at any one time be entered in the Special Jurors' List.

The number of Special Jurors in the first list to be allowed to die down to two hundred.

After which the number of Special Jurors not to exceed two hundred.

XIV. All persons whose names are entered in the "Special Jurors' List" shall be exempted from serving on any other than Special Juries.

Special Jurors exempted from serving on Common Juries.

XV. The Clerk of the Crown, or such other Officer as the Chief Justice of the High Court shall direct, shall, before the first day of April in each year, and subject in all respects to such rules as the High Court shall from time to time prescribe, prepare a list of all persons qualified and liable to serve as Jurors: and shall, before the fifteenth day of April, which shall first occur after the reduction of the number of names in the "Special Jurors' List" as aforesaid, and before every subsequent fifteenth day of April, but subject always to such rules as aforesaid, take from the general list of Jurors the names of such persons as he may think fit, regard being had to their property, character, and education, and shall enter the same in the "Special Jurors' List."

Preparation of lists of Jurors and Special Jurors.

XVI. The Clerk of the Crown or other Officer appointed by the Chief Justice shall, subject to such rules as aforesaid, have full and entire discretion to prepare the said lists as shall seem to him to be proper, and there shall be no appeal from or review of his decision.

Officer preparing the lists to have full discretion: no appeal from his decision.

XVII. The list of persons qualified or liable to serve as Jurors, and the "Special Jurors' List," respectively signed by the Officer by whom the same shall have been prepared, shall be published once in the Official Gazette, before the first day of May next, after their preparation, and copies of the said lists shall be affixed to some conspicuous part of the Court House.

Lists of Jurors to be published in the Gazette.

XVIII. Out of the names contained in the lists aforesaid, there shall be summoned for each Sessions thirty-six of those who are qualified and liable to serve on special Juries, and seventy-two of those who are qualified and liable to serve on Common Juries.

Jurors and Special Jurors to be summoned for each Sessions.

Of Challenges of Jurors in the Presidency Towns.

XIX. A peremptory challenge, to the number of twenty in Common Juries, and ten in Special Juries, shall be allowed; but there shall be no challenge to the array, and save as aforesaid, the following and no others shall be good causes of challenge, whether on behalf of the Crown or by the person charged :—

Challenges.

(1). Some personal objection, such as alienage, infancy, old age, or deficiency in the qualification required by any law or rule having the force of law for the time being in force.

(2). Some presumed or actual partiality in the Juror.

(3). A previous conviction of the Juror under the Indian Penal Code, or the criminal law administered in the Supreme Courts of Judicature or the Courts of the East India Company previously to the enactment of such Code.

XX. The Judge, before whom the person charged is about to be tried, shall try any challenge, other than a peremptory challenge: and if he allow the challenge, the Juror shall be set aside.

Judge to try challenge.

XXI. Save as hereinbefore provided, the High Court shall retain all its present powers respecting the summoning, empannelling, qualification, challenging, and service of Jurors in the Presidency Towns: and shall have power to make such rules on these subjects (not inconsistent with the provisions of this Act) as shall seem to it to be proper. All rules relating thereto now in force in the High Court shall (so far as they are not inconsistent with this Act) remain in full force until repealed or altered by new rules made under this Section.

High Court to retain its present jurisdiction as to Jurors in Presidency Towns except as altered by this Act.

Of Sittings under a Commission.

XXII. From and after the commencement of this Act, whenever it shall appear to the Governor General of India in Council convenient that the jurisdiction and power vested in the High Court at Fort William in Bengal should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the said High Court, whether within or without the Bengal Division of the Presidency of Fort William, other than the usual place of sitting of such Court, or at several such places by way of circuit, and the Governor General of India in Council shall, by his Commission for that purpose, authorize and direct any of the Judges of such Court to hold sittings in such place or places accordingly,

Jurisdiction of Judge acting under Commission from Governor-General of India in Council.

at or within such times as by such Commission may be authorized or directed, the Judge or Judges acting under such Commission, in the places and manner therein directed, shall have and exercise the same jurisdiction, power, and authority as would be had and exercised by a Judge or Judges of the High Court of Judicature at Fort William in Bengal in its ordinary place of sitting, but subject, as respects the exercise of original Criminal jurisdiction in any place other than the ordinary place of sitting of such High Court, to the provisions contained in the twenty-eighth and following Sections of this Act.

Jurisdiction of Judge acting under Commission of Governor in Council of Madras.

XXIII. From and after the commencement of this Act, whenever it shall appear to the Governor in Council of Madras convenient that the jurisdiction and power vested in the High Court of Judicature at Madras should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the same High Court, whether within or without the Presidency of Madras, other than the usual place of sitting of such Court or at several such places by way of circuit, and such Governor in Council shall, by this Commission for that purpose, authorize and direct any of the Judges of such Court to hold sittings in such place or places accordingly, at or within such times as by such Commission may be authorized or directed, the Judge or Judges acting under such Commission, in the places and manner therein directed, shall have and exercise the same jurisdiction, power, and authority as would be had and exercised by a Judge or Judges of the High Court at Madras in its ordinary place of sitting, but subject, as respects the exercise of original Criminal jurisdiction in any place other than the ordinary place of sitting of the same Court, to the provisions contained in the twenty-eighth and following Sections of this Act.

Jurisdiction of Judge acting under Commission of Governor in Council of Bombay.

XXIV. From and after the commencement of this Act, whenever it shall appear to the Governor in Council of Bombay convenient that the jurisdiction and power vested in the High Court of Judicature at Bombay should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the same Court, whether within or without the Presidency of Bombay, other than the usual place of sitting of such Court, or at several such places by way of circuit, and such Governor in Council shall, by his Commission for that purpose, authorize and direct any of the Judges of such Court to hold sittings in such place or places accordingly, at or within such times as by such Commission may be authorized or directed, the Judge or Judges acting under such Commission, in the places and manner therein directed, shall have and exercise the same jurisdiction, power, and authority as would be had and exercised by a Judge or Judges of the High Court at Bombay in its ordinary place of sitting, but subject, as respects the exercise of original Criminal jurisdiction in any place other than the ordinary place of sitting of the same Court, to the provisions contained in the twenty-eighth and following Sections of this Act.

High Court may allot jurisdiction to Judge acting under Commission.

XXV. The High Court may allot to a Judge or Judges acting under a Commission as aforesaid, such part of the extraordinary original Civil jurisdiction, and of the Civil and Criminal Appellate jurisdiction, and of the jurisdiction as a Court of revision or reference, which it is competent to exercise at its usual place of sitting, as the High Court may

consider, can be more conveniently exercised at any place or places mentioned in such Commission.

Commission to specify time and place during and in which it shall remain in force.

XXVI. Every Commission issued as aforesaid under any of the preceding Sections shall specify the time during which, and the Districts or places within which, such Commission shall remain in force; and such time and the limits of such Districts or places shall be notified in the Official Gazette.

Power to appoint an Associate Judge.

XXVII. The Governor General of India in Council or the Governor of Madras or of Bombay in Council, as the case may be, may, by such Commission as aforesaid, associate with such Judge of the High Court any Barrister-at-law of not less than five years' standing, or any Sessions Judge. The person so associated shall be called the Associate Judge, and, unless directed to try persons separately as hereinafter provided, may sit with the Judge of the High Court during the trials of persons tried under such Commission. Whenever any Associate Judge sits with the Judge of the High Court, the latter shall preside, conduct the case, and pronounce judgment.

Charge to be delivered with record of preliminary enquiry with ut the local limits of the ordinary original Civil jurisdiction

XXVIII. Any Justice of the Peace or Magistrate without the local limits of the ordinary original Civil jurisdiction of the High Court, before whom any European British subject shall be brought for an offence committed without those limits, shall, immediately after the conclusion of the preliminary enquiry, and if he shall determine to commit or hold to bail such person for trial, give notice thereof to the High Court to which the commitment or bailment would ordinarily be made, and shall send to the Clerk of the Crown, together with the record of the preliminary enquiry, and translations into English of any writings not in that language, a written instrument of charge signed by him stating for what offence such person is committed or held to bail. On receipt of these documents, the Clerk of the Crown shall proceed as directed in the like case in the fourth Section, and the person charged shall be entitled to copies in like manner as he would be entitled to copies under the fifth Section of this Act. If a Commission under which the person charged might be tried shall have been issued, the High Court shall consider at what place the person charged can be most conveniently tried, and shall give directions accordingly: if no such Commission shall have been issued, the High Court shall obtain information from the Government as to whether such Commission is about to issue, and shall then give such directions as last aforesaid. Provided always that, if the commitment or bailment have been made after the issue and during the running of a Commission under which the person charged might be tried, the notice by this Section directed to be given to the Clerk of the Crown shall be given, and the documents directed to be sent to the Clerk of the Crown shall be sent, to the Clerk of the Crown with the Judge of the High Court acting under the Commission. Such Judge shall have all the powers given to the High Court by this and the next succeeding Section.

The charge shall be deemed a charge under the Criminal Procedure Code.

XXIX. The charge, whether it shall or shall not have been amended, altered, or added to, under the last preceding Section, shall, if the person charged be directed to be tried at a place other than the usual place of sitting of the Court, have the same effect as a charge under the thirteenth Chapter of the Code of Criminal Procedure, and the person charged

shall be tried thereon before a Judge of the High Court, whether sitting by himself or with an Associate Judge. But if, at any time before the High Court shall have directed where the trial of the person charged shall take place, the charge appear to the High Court to be clearly unsustainable, an entry to that effect may be made by the proper Officer of the Court at any time before the commencement of the trial. Such entry shall have the effect of staying proceedings on the charge, but shall not operate as an acquittal of the person charged, unless and until three years from the time of making the entry shall have elapsed, at the expiration of which period, if no fresh charge have been brought on the same matter, he shall be considered as having been acquitted. If the person charged be directed to be tried at the usual place of sitting of the Court, the charge, whether amended, altered, or added to, as last aforesaid, or not, shall have the same effect as, and be deemed to be, a charge under the sixth, seventh, and eighth Sections of this Act.

If unsustainable, the proceedings may be stayed.

XXX. Pending the directions of the High Court as to the place of trial, every such British subject as is referred to in the twenty-eighth Section of this Act shall (if not out on bail) be committed by the Justice of the Peace or Magistrate for intermediate custody to the nearest Criminal jail in which he can be most conveniently confined. If the trial shall be directed to take place in the usual place of sitting of the Court, the Justice of the Peace or Magistrate shall bind over the person charged to appear and take his trial at such usual place of sitting, or shall commit him to the jail at such place. If the High Court shall direct that the person charged be tried elsewhere than in its usual place of sitting, the Justice of the Peace or Magistrate shall bind him over to appear and take his trial in the place directed, or (as the case may be) shall, if necessary, cause him to be removed to the Criminal jail of or nearest to the place at which such person is directed to be tried; and the Officer in charge of such Criminal jail shall keep such person in safe custody, until discharged in due course of law.

Procedure pending directions of High Court.

XXXI. It shall be lawful for the High Court to direct that all European British subjects committed or bailed for trial within certain specified Districts or during certain specified periods of the year, shall be tried at the usual place of sitting of the Court, or to direct that they shall be tried at a particular place named; and also to order that such European British subjects shall, if not bailed, be committed for intermediate custody to a particular jail, being one of the jails appointed by the Government for the reception of such prisoners. In any such case the High Court may direct, further, that the notice required by the twenty-eight Section of this Act to be given, and the papers required by that Section to be sent, to the Clerk of the Crown, shall be given and sent to a particular Clerk of the Crown named by the High Court in that behalf. Every person bailed or committed to take his trial at any particular place, in compliance with a general direction under the provisions of this Section, shall be dealt with in all respects as if he had been bailed or committed in compliance with a special direction under the twenty-eighth Section of this Act.

High Court may order European British subjects committed in certain Districts in certain seasons of the year to be tried at a particular place and confined in a particular Jail.

XXXII. When the High Court shall have directed that any European British subject shall be tried at any place other than its usual place of sitting, the Judge of the High Court acting under such Commission as aforesaid in the place and manner therein mentioned, shall, whether sitting by himself or with the Associate Judge, have and exercise in respect of such European British subject the same jurisdiction, power, and authority which would be had and exercised by the High Court at its ordinary place of sitting if the said European British subject had been committed or bailed to the said High Court at its ordinary place of sitting for the offence with which he is charged. But the trial of the said European British subject before such Judge of the High Court acting under such Commission as aforesaid, and whether sitting by himself or with the Associate Judge, shall, subject to the exceptions hereinafter declared, be conducted in accordance with the rules and provisions contained in the Code of Criminal Procedure, and thereby made applicable to trials of persons committed or bailed for trial before the Court of Session for offences triable by such Court.

Jurisdiction over European British subjects tried under Commission

Code of Criminal Procedure to apply to the trial of such subjects except as thereinafter declared

XXXIII. The Judge of the High Court acting under such Commission in the place and manner therein mentioned, and whether sitting by himself or with the Associate Judge, shall, if he shall think fit, have and exercise the same jurisdiction, power, and authority in respect of any person committed or bailed for trial under the Code of Criminal Procedure before the Court of Session at the place and within the time in such Commission mentioned, as might be had and exercised by the Court of Session to which such person was committed or bailed. The trial of such person shall be conducted, subject to the exceptions hereinafter declared, in accordance with the rules and provisions contained in the Code of Criminal Procedure, and thereby made applicable to trials before a Court of Session of persons committed or bailed to such Court for offences triable by the same.

Jurisdiction over persons not European British subjects tried under Commission.

XXXIV. All trials before a Judge of the High Court acting under such Commission as aforesaid, and whether sitting by himself or with the Associate Judge, shall be by Jury.

Trials under Commission to be by Jury.

XXXV. Whenever the Governor General of India in Council or the Governor of Madras or of Bombay in Council, as the case may be, shall have signified to the High Court that is is intended to issue a Commission as aforesaid to any Judge or Judges of the High Court authorizing and directing sittings of the said Judge or Judges in any place, the High Court shall give notice of such intention to the Court of Session at such place, and thereupon the said Court of Session shall take and cause to be taken the measures prescribed by Sections three hundred and thirty-six to three hundred and forty, both inclusive, of the Code of Criminal Procedure for the summoning of Jurors; and in addition to the persons so summoned as Jurors, the said Court of Session shall, if it shall think needful, after communication with the Commanding Officer, cause to be summoned such number of Commissioned and Non-Commissioned Officers in the Military service, resident within ten miles of its place of sitting, as the Court shall consider to be necessary to make up

Summoning of Jurors to serve on trials under Commission.

Military men not exempt.

the Juries required for the trial of persons charged with offences before the Judge of the High Court acting under Commission as aforesaid. All Commissioned and Non-Commissioned Officers so summoned shall be liable to serve on such Juries, notwithstanding anything contained in the Code of Criminal Procedure, but no Commissioned or Non-Commissioned Officer shall be summoned whom his Commanding Officer shall desire to have excused on the ground of urgent Military duty or for any other special Military reason. The Juries for the trial of persons triable by such Judge of the High Court acting under such Commission as aforesaid, shall be formed in the manner required by the Code of Criminal Procedure and by this Act from the persons summoned under the said Sections of the Code of Criminal Procedure and from the Commissioned and Non-Commissioned Officers summoned as aforesaid, or, if no such Officers have been summoned, then solely from the persons summoned under the same Sections.

Jury for trial of European British subject.

XXXVI. If the person charged shall be a European British subject and shall so require before the Jury shall be empannelled, the majority of the Jurors shall consist of Europeans or Americans. If such a Jury cannot be procured, the person so charged shall be sent for trial by the High Court in its usual place of sitting.

Number of Jury requisite to verdict of guilty.

XXXVII. On every trial mentioned in the thirty-fourth Section of this Act, the Jury shall consist of twelve persons, and unanimity, or a majority of not less than nine with the concurrence of the presiding Judge, shall be necessary for a verdict of guilty. In default of such unanimity, or of such majority and concurrence, the prisoner shall be acquitted.

Acts not of a judicial nature may be done by Clerk of the Crown.

XXXVIII. During the trial of any person before a Judge of the High Court acting under Commission as aforesaid, or before a Judge of the High Court and an Associate Judge sitting together, any act, not of a judicial nature, which the Code of Criminal Procedure requires to be done by the Court of Session, may be done by the Clerk of the Crown or by any Officer of the Court directed by such Judge to perform such act.

Portions of Section 380 of Criminal Procedure Code not to apply to sentences by High Court Judge.

XXXIX. So much of the three hundred and eightieth Section of the Code of Criminal Procedure as requires the confirmation by the Sudder Court of sentences of death passed by a Court of Session, and so much of the said Section as requires from the Court a statement of the grounds on which a person convicted of an offence made punishable by death by the Indian Penal Code has been sentenced to a punishment other than death, shall not apply to sentences by a Judge of the High Court acting under Commission as aforesaid.

Portion of 26th Chapter of Criminal Procedure Code not to apply to sentences of High Court Judge.

XL. So much of the twenty-sixth Chapter of the Code of Criminal Procedure as requires judgment to be passed by a Criminal Court in any particular form, and as requires that the sentence or finding shall be recorded in any particular form, shall not apply to judgments, sentences, or findings in trials before a Judge of the High Court acting under such Commission as aforesaid, whether sitting by himself or with an Associate Judge; but the Judge shall pass judgment and shall record or cause to be recorded the sentence and finding in such form as he shall think proper.

There may be reasonable ground against the admission of such a confession, though perhaps it would be better to admit it, and to leave those who have to determine as to the guilt or innocence of the prisoner to judge of the weight which ought to be attached to it.

The object of the Criminal Law is to punish the guilty for the purpose of deterring them and others from committing offences. The object of the Law of Procedure, including the Law of Evidence, is, or ought to be, that the innocent shall be protected, and the guilty punished. I cannot, therefore, at all agree with the remarks of Miller, *J.*, and in the expression of his disapproval of the conduct of the Police Officer on asking questions, provided he does not hold out hope or fear as an inducement to confess.

Some cases have gone to the extent of saying that a statement is not admissible if it is obtained by telling the prisoner he had better tell the truth. For my own part I cannot see any objection to telling every man that he had better tell the truth, but that is very different from telling a man that he had better confess, when you don't know whether he is innocent or guilty.

Though it has been held in some cases that confessions obtained by asking questions are not admissible, and although law is said to be the perfection of reason, it has been distinctly ruled in England—and I believe without a dissentient voice—that confessions obtained by artifice or deception are admissible. Therefore, where a confession was obtained by a person who took an oath that he would never mention what the prisoner told him, the statement made when disclosed was held to be admissible; so where it appeared that one of the prisoners had made a statement to a Constable whilst he was drunk, and it was imputed to the Constable that he had given him liquor to cause him to do so, the statement was held to be admissible evidence against the statement not having been made under the inducement of hope or fear.—See the cases collected in Roscoe on Evidence in Criminal cases, 47. It is high time, I think, that we should decide according to principles of these which are founded in reason and good sense. I therefore hold that what the prisoner said in answer to questions put to him by the Police Officer was admissible, no threat or deception having been used or any false hope held out: the other question remaining is, whether statements made in answer to questions put by a Justice of the Peace or Magistrate are admissible against the prisoner. I do not wish to put this question upon any technical ground. S. 202, Criminal Procedure Code, says that "it shall be in the discretion" of the Magistrate from time to time, "at any stage of the enquiry, to examine the accused person and to put such questions to him as he may consider necessary, and it shall be in the option of the accused person to answer such questions."

It does not appear whether Mr. Ryland was acting as a Deputy Magistrate or in his character as a Justice of the Peace when the charge was first brought before him. I have no doubt that answers given by a prisoner to questions put by a Magistrate under S. 202 are admissible in evidence, although the Magistrate may omit to inform the prisoner what the law is, and that he is not bound to answer the questions. I apprehend that any statement which is made by the prisoner in answer to such a question is admissible against him, not only in regard to cases within the jurisdiction of the Magistrate, or bearing upon the case before the Magistrate, but it would be admissible against the prisoner with regard to other offences of which he might be charged in another Court.

For instance, if a prisoner were apprehended at Howrah upon a charge of murder at Howrah, and if the Policeman should say, "when the prisoner saw me coming up dressed as a Police Officer, he immediately ran away;" suppose the Magistrate should ask the prisoner, "why did you run away when you saw a Police Officer," and he were to answer, "I had stolen some money from *A B* in Calcutta; I had just crossed the ferry, and when I saw the Officer coming up, I thought he was going to take me into custody for stealing the money, and therefore I ran away:" that statement being made in answer to a lawful question put to him by the Magistrate, would, I have no doubt, be evidence against the prisoner if he were acquitted of murder and indicted at the Sessions in Calcutta for stealing the money.

I have no doubt, therefore, that what the prisoner said to the Magistrate would in this case be admissible against him, even if the questions put by the Magistrate were put whilst he was acting in his character as a Magistrate. But, as I said before, I do not wish to put this case upon a technical ground, and I will assume, therefore, that Mr. Ryland was acting throughout as a Justice of the Peace for Bengal, with reference to an offence committed in Calcutta.

There is not much difference, as regards the common sense point of view between statements made in answer to questions put by Mr. Ryland as a Justice of the Peace and statements made in answer to questions put by the Police Officer, assuming it to be true that the statements were made. There would, however, be this difference, that when the questions were put by a Magistrate, the prisoner might have believed that the Magistrate had the same power to compel him to answer the questions as he would have had with

regard to a witness, and that therefore it may be urged that the Magistrate ought to have explained the law to the prisoner, and told him that, although he asked the questions, the prisoner was not bound by law to answer them.

In R. vs. Wilson, 1 Holt Nisi Prius Report, 597, it was held by Richards, *C. B.*, that the examination of a prisoner before a Magistrate who examined him as a witness, though he held out no threat or inducement, could not be used as evidence against the prisoner.

The Judge says, "No matter whether a prisoner be sworn or not, an examination of itself imposes an obligation to speak the truth." Suppose the prisoner in this case was ignorant of the law, and believed that when the Magistrate asked him these questions without telling him that he was not bound to answer, he was under a legal obligation to speak the truth, when the law allowed him to be silent. The Magistrate did not deceive him, nor did he use artifice: and if artifice or deception would be no legal answer to the reception of the statements against the prisoner, why should the statements be rejected, because the Magistrate omitted to tell the prisoner what the law was?

There was no torture used, no threat of punishment, and if the prisoner answered under a belief that he was bound to speak the truth, it appears to me that there was no injustice in receiving against him the answers he gave under that belief. We are not to infer that the prisoner said what was not true, because he erroneously believed himself to be under an obligation to speak the truth: even if what the prisoner stated had amounted to a confession of guilt, it would be very different from a confession made under an inducement of hope or fear, because, as I have already remarked, a confession made under an inducement held out to make a confession, may be made false by a prisoner under a belief that he will benefit by it.

In R. *vs.* Allis, 1 Ryan and Moody, 432, Littledale, *J.*, held that an examination of a prisoner charged with felony, taken without threat or promise by questions put by a Magistrate, was admissible. He there says, referring to Starkie on Evidence, Appendix, Part IV, 52, where the case of R. *vs.* Wilson, to which I have referred, is also noticed, Mr. J. Holroyd received an examination to which there was this objection, and he added, "I think his decision is the correct one, and that the evidence is on principle admissible."

For these reasons I think that the statements made by the prisoner in answer to the questions put by Mr. Ryland were admissible as evidence against the prisoner.

The decision of Phear, *J.*, was made during a trial, and without full argument on the whole questions, and it does not appear that any of the authorities to which I have referred had been brought to his notice. It was in the nature of a *nisi prius* decision by which Courts sitting in Banc do not usually consider themselves bound. I wish to add a few words on the point which escaped me. It was said that on the second occasion, when the Magistrate informed the prisoner that he was not bound to answer the questions, he informed him that if he objected to answer, that fact would be noted. It was contended in argument that that amounted to a kind of threat, but I think the Magistrate was quite right when he told the prisoner that he was not bound to answer—that if he objected to answer, the fact would be noted. The Magistrate by telling the prisoner he was not bound to answer, without adding that if he objected, a note would be taken, might have induced the prisoner to decline to answer the question, when the fact of his declining might have raised a prejudice against him.

APPENDIX C.

LAWS RELATING TO OFFENCES COMMITTED IN FOREIGN TERRITORIES, AND OF EXTRADITION.

ACT No. I. OF 1849.

PASSED BY THE HON'BLE THE PRESIDENT OF THE COUNCIL OF INDIA IN COUNCIL ON THE 27TH JANUARY, 1849.

An Act to provide more effectually for the punishment of offences committed in Foreign States.

Whereas divers Regulations of the Bengal, Madras, and Bombay Codes have been made, from time to time, for the trial of native subjects of the

British Government, committing criminal offences beyond the limits of the British Provinces, and it is expedient to make the same more effectual and uniform, and to extend the application thereof: It is enacted as follows:

1. The undermentioned Regulations and parts of Regulations are rescinded, that is to say:

Regulation V. of 1809, Regulation VIII. of 1813, Section 6 of Regulation I. and the whole of Regulation IX. of 1822, and Regulation VIII. of 1829 of the Bengal Code; Regulation II. of 1829, and Regulation XII. of 1832 of the Madras Code; Section 4 of Regulation XI. of 1827 of the Bombay Code; except so far as any of them rescinds any former Regulation.

2. All subjects of the British Government and also all persons in the Civil or Military service of the said Government, while actually in such service, and for six months afterwards, and also all persons who shall have dwelt for six months within the British territories under the Government of the East India Company, subject to the laws of the said territories, who shall be apprehended within the said territories, or delivered into the custody of a Magistrate within the said territories, whenever apprehended, shall be amenable to the law for all offences committed by them within the territory of any Foreign Prince or State; and may be bailed or committed for trial as hereafter provided, on the like evidence as would warrant their being held to bail or committed for the same offence, if it had been committed within the British territories.

Under this law the Calcutta High Court affirmed the conviction of two persons for murder committed in the independent territory of Cooch Behar, they being British subjects, and only temporarily residents of that state.—Dhurmo Narain Moitro and others, 1 W. R., 39. *See* also case of Reg. *vs.* Moulvie Ahmedoolla, 2 W. R., 60.

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And be it further enacted, that all His Majesty's subjects, as well servants of the said United Company as others, shall be and are hereby declared to be amenable to all Courts of Justice, both in India and Great Britain, of competent jurisdiction to try offences committed in India, for all acts, injuries, wrongs, oppressions, trespasses, misdemeanors, offences and crimes whatever, by them or any of them done or to be done, or committed in any of the lands or territories of any native prince or state, or against their persons or properties, or the persons or properties of any of their subjects or people, in the same manner as if the same had been done or committed within the territories directly subject to and under the British Government in India.

3. The Committing Magistrate immediately, and before the trial, shall report every such case to the Government, and shall obey the orders which he shall receive thereon.

4. The Government may order the trial to be had before one of the established Courts of Criminal Judicature, which would be competent to try the person charged for the offence, if it had been committed within the British territories.

5. When the offence is charged to have been committed in the territory of any Foreign Prince or State, administered by officers acting under the authority of the East India Company, in which territory a Court, competent to try the person charged for the offence, is established by authority

of the Governor-General of India in Council, the Government may order such person to be conveyed in custody, out of the British territories, for the purpose of delivering him up for trial before such Court.

6. When the person charged is committed, the form of the warrant shall specify the commitment to be until the orders of Government can be received and acted on; when he is bailed, the form of the bail-bond shall be, in the first instance, to appear before the Magistrate on a certain day assigned, allowing resonable time for receipt of the orders of Government, and on such subsequent days as the Magistrate from time to time shall require; and if Government shall order the person charged to be tried within the Presidency, the Magistrate may cause the bail-bond to be renewed in the usual form, to appear and take his trial at the Court appointed for the purpose.

7. In either case the special order of the Government shall be deemed full authority, either for the trial and punishment of the person charged within the British territories, or for conveying him, in custody, out of the British territories, as aforesaid.

8. The word "Government," as used in the third and following sections of this Act, means the Governor or Governor in Council or other person or persons having Supreme Executive Authority in the Presidency or place to which the Committing Magistrate belongs.

9. The authority hereinbefore given to the Government may be also exercised by any Commissioner or other person acting in the Civil Service of the East India Company, to whom the Governor-General in Council shall have delegated authority to receive reports and give orders in cases within this Act.

ACT No. VII. OF 1854.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL ON THE 17TH FEBRUARY 1854.

An Act for the apprehension, within the territories under the Government of the East India Company, of persons charged with the commission of heinous offences beyond the limits of the said territories, and for delivering them up to justice, and to provide for the execution of warrants in places out of the jurisdiction of the authorities issuing them.

Whereas it is expedient to provide for apprehending and delivering up to justice persons, whether subjects of the British or of any Foreign Government, who shall take refuge or be found in any part of the territories under the Government of the East India Company, and shall be charged with having been guilty of heinous offences in any part of the dominions of Her Majesty, or in the territories of any Foreign Prince or State; to facilitate the execution in any part of the territories under the Government of the East India Company of warrants issued by competent officers in any other parts thereof; and to enable the Government of any Presidency or place within such last-mentioned territories to carry out treaties entered into by or on behalf of Her Majesty or the East India Company with any Foreign Prince or State; It is enacted as follows:—

I. If requisition be made by or by the authority of the person or persons for the time being administering the Executive Government of any part of the dominions of Her Majesty, to the Government of any part of the

British territories in India, to deliver up to justice any person accused of having been guilty of any heinous offence† in any part of Her Majesty's dominions subject to the Government making the requisition, and who shall be or shall be supposed to be, in any part of the British territories in India, subject to the Government to which the requisition shall be made, or if a similar requisition be made by any Foreign Prince or State, or by any duly authorized Minister or Officer thereof, in respect of a person accused of having been guilty of any heinous offence† in any part of the territories, such Foreign Prince or State, it shall be lawful for the Government to which the requisition shall be made, if it shall see fit so to do, to issue an order in writing for inquiry into the truth of the charge; and such order shall be sufficient proof of the requisition having been duly made, and a sufficient justification for all acts done in pursuance thereof.

II. The order shall be signed by one of the Secretaries to the Government; it shall be directed to all Magistrates* and Justices of the Peace of the Presidency or place under the control of such Government; it shall signify that the requisition has been made, shall state the nature of the offence† charged, the name or other designation, if the name be not known, of the person accused, and any other description of him that may be thought necessary, and it shall require the Magistrates* and Justices to whom it shall be directed, or any of them, to enquire into the truth of the charge, and to proceed in pursuance of this Act.

III. Upon the production of the order to any such Magistrate* or Justice of the Peace, he shall have the same powers as if the offence charged had been committed within his jurisdiction.

IV. If the evidence adduced shall, in the judgment of the Magistrate* or Justice of the Peace, be sufficient to justify the apprehension of the person accused for the offence† the Magistrate* or Justice of the Peace shall issue his warrant for the apprehension of such person. The warrant shall be issued in the same manner as a warrant for an offence committed within the jurisdiction of the Magistrate* or Justice of the Peace issuing it, and shall contain a memorandum stating that the warrant is issued under this Act, and, if the warrant be issued under an order of Government, shall also state the fact and specify the Government. The memorandum may be to the following effect:—

This warrant is issued under Act No. VII. of 1854, and is issued under ——————— an order of the Government of ———————.

V. The warrant of any Magistrate* or Justice of the Peace having jurisdiction in any part of the territories under the Government of the East India Company for the arrest of any person charged with having committed any offence, whether such warrant be issued under the provisions of this Act or not, may be executed within the jurisdiction of any other Magistrate* or Justice of Peace having jurisdiction in any part of the said territories, whether in the same Presidency or not, upon having a written authority under the hand and seal of the Magistrate* or Justice of the Peace, within whose jurisdiction it may be executed, previously endorsed thereon, and which endorsement may be to the following effect:—

To the Nazir [or other Officer, as the case may be] of the Zillah of

"This warrant may be executed in the zillah or district of

" (describing the zillah or district of the indorsing Magistrate

* For the definition of the term "Magistrate" see S. 25.

† Defined in S. 21, and See S. 1, also S. 22.

or Justice of the Peace) by any of the Officers to whom the same is directed or by [describing by his name of Office the Officer to whom a similar warrant, issued by the indorsing Magistrate or Justice of the Peace, would be directed.]

VI. The Magistrate* indorsing a warrant in pursuance of the provisions of Section V. of this Act shall not be liable to any action or other proceeding in consequence of any illegality in the issuing of the warrant; but any Magistrate* illegally or improperly issuing the same shall be liable for an arrest in pursuance of the indorsement, in the same manner and to the same extent only as if the warrant had been executed within his own jurisdiction.

VII. Upon the apprehension of the supposed offender, if the offence† be alleged to have been committed in any part of the territories under the Government of the East India Company, he shall be carried before the Magistrate* within whose jurisdiction the offence† shall be alleged to have been committed, and shall be by him dealt with according to law, unless by the warrant the Officer be authorized to take bail or security, and such bail or security be given for the appearance of the person accused before the Magistrate* or Justice of the Peace of the zillah or district in which the offence† shall be alleged to have been committed. If the offence† be charged to have been committed in any place not within the territories under the Government of the East India Company, the person arrested shall be forthwith carried before a Magistrate* or Justice of the Peace of the zillah or district in which he shall be arrested. The Magistrate* or Justice of the Peace, before whom the supposed offender shall be carried in pursuance of the last-mentioned directions, may proceed in the same manner as in cases in which he has power to commit for trial, or to hold to bail for an offence committed within his own jurisdiction. If, after making as full an inquiry into all the circumstances of the case as the evidence obtainable by the Magistrate* or Justice of the Peace within the territories under the Government of the East India Company will enable him to make, the evidence adduced shall be sufficient in his judgment to warrant a committal, he shall commit the accused to some place of confinement within his zillah or district, which in the judgment of the Magistrate* or Justice of the Peace shall be fit for receiving the prisoner, or if there be no such place, to the gaol of the Presidency, there to remain until he shall be delivered up or discharged by orders of Government; if after making such inquiry the circumstances shall not, in the judgment of the Magistrate* or Justice of the Peace, be sufficient to warrant either the committal or the holding to bail of the prisoner, he shall be discharged.

VIII. If the offence† charged be one committed out of the British territories in India, which, if committed within the jurisdiction of the Magistrate, would be bailable, the Magistrate* or Justice of the Peace may proceed accordingly, and may discharge the prisoner upon his giving the necessary bail. The recognizance or bail-bond in such case shall be for the appearance of the accused before the Magistrate* or Justice of the Peace for the time being of the zillah or district in which the recognizance shall be taken, on a certain day to be named therein, allowing reasonable time for receiving the orders of Government, and on such subsequent days as the Magistrate* or Justice of the Peace for the time being shall from time to time appoint.

* For the definition of the term "Magistrate" see S. 25.
† See Ss. 1, 21, 22.

IX. If any person shall in pursuance of this Act be carried before a Magistrate* or Justice of the Peace other than the one who issued the warrant, or a Magistrate* or Justice of the Peace for the time being of the same zillah or district, the depositions and documents upon which the warrant was issued, or copies thereof, to be certified under the hand and seal of the Magistrate* or Justice of the Peace of the zillah or district in which the warrant was issued, shall, upon the requisition of the Magistrate* or Justice of the Peace before whom such person shall be carried, be forwarded to such Magistrate* or Justice of the Peace; and if the warrant be issued under an order of Government, and executed in a Presidency or place not under the Government issuing the order, notice of the arrest shall be forthwith communicated to such Government, who shall forward the requisition and any documents relating thereto in their possession to the Government having jurisdiction over the place of arrest, and such last-mentioned Government shall have the same powers as the Government who made the order.

X. If the person accused of the offence† mentioned in any such order of Government be proved to have been convicted, and sentenced for the offence† charged by a Court of Justice in any part of Her Majesty's dominions in which the offence† is alleged to have been committed, and to have escaped before such sentence was carried into execution; the Magistrate* or Justice of the Peace, upon proof of such conviction and sentence, may issue a warrant for the apprehension of the person accused, and he may be arrested and committed in manner aforesaid without further proof, unless such person shall prove that the conviction or sentence has been reversed or annulled.

XI. If it appear to the Magistrate* or Justice of the Peace, before whom any prisoner shall be carried under this Act for an offence† alleged to have been committed in any territories not under the Government of the East India Company, that particular circumstances exist which render it advisable that the case should be investigated by the Magistrate* or Justice of the Peace of a zillah or district nearer to such territories, he shall forthwith report the case and the particular circumstances to the Government, who shall either order such Magistrate* or Justice of the Peace to proceed with the case himself, or to send the case to be investigated by the Magistrate* or Justice of the Peace of any other district to be named by the Government. In the latter case the prisoner shall be sent, or, if the offence be bailable, shall give bail to appear before such last-mentioned Magistrate* or Justice of the Peace, who shall have power to deal with the case as if he had issued the warrant under which the prisoner shall be arrested, and all the depositions and documents shall be forwarded to such Magistrate* or Justice of the Peace. The order of Government shall be a sufficient justification for all persons acting in pursuance thereof.

XII. The Government by whom any order under Section I. of this Act shall be made, may, if they think fit so to do, direct that copies of any depositions or exhibits which shall have been laid before them and shall have been certified to their satisfaction to be true copies of depositions or exhibits made or produced before a competent judicial Officer of the territories in which the offence is alleged to have been committed, may be received in evidence of the criminality of the person accused, and such direction shall be sufficient authority for receiving the same in evidence.

* For the definition of the term "Magistrate" see S. 25.
† See Ss. 1, 21, 22.

XIII. The Magistrate* or Justice of the Peace, after committing the accused or holding him to bail as aforesaid, for any offence† committed out of the territories under the Government of the East India Company, shall forthwith report the result of his proceedings to the Government to which he is subordinate, together with any remarks which he may deem necessary or proper to make upon the whole case. He shall also forward with such report a copy of all depositions and documents used before him.

XIV. Upon receipt of the report, and after examining the case, the Government may, by order in writing to be signed by the Secretary to the Government, order the accused either to be discharged or to be held to bail to appear in such Court or place and at such time or times as the Government may think fit, or to be delivered up to some person authorized by the Government or Officer making the requisition to receive and take charge of him. In cases falling within the provisions of Act I. of 1849, the Government may order the person accused to be tried under that Act.

XV. If ordered to be delivered up, the person to whom the accused shall be ordered to be delivered, shall not have the custody or charge of him so long as he shall remain in any part of the territories under the Government of the East India Company, but the accused shall be conveyed in custody through such last-mentioned territories towards the territories in which the offence shall be alleged to have been committed, in the same manner as a prisoner sent from the station of one district to that of another, and as soon as he shall have been conveyed to the frontiers of the territories under the Government of the East India Company, he shall be delivered over to some person authorized by the Government making the requisition to receive and take charge of him. If no such person shall attend to receive the prisoner, the latter shall be taken before the nearest Magistrate, who may order him to be discharged out of custody, and may provide him with such means of returning to the place where he was apprehended or so near thereto as he may desire, as such Magistrate* may think necessary and suitable to his station.

XVI. Any Magistrate* or Justice of the Peace acting under the provisions of this Act shall issue all necessary warrants, orders, and directions for carrying this Act, and also any order made under it by the Government, into effect, under his signature and seal, or seal of office, if he shall have a seal of office, and all Magistrates* and Officers acting in pursuance of this Act shall have and exercise the same powers as if the offence charged had been committed within the zillah or district subject to their jurisdiction ; and in cases where the accused may have been held to bail, the Magistrate* may order the bail-bond to be renewed in such form as may be necessary to carry any order of Government into effect, and, if such bail-bond shall not be renewed accordingly, may commit the person accused to prison for such period as may be necessary to carry such order into effect

XVII. In case any person arrested under this Act shall escape out of custody, he may be re-taken in any part of the territories under the Government of the East India Company, in the same manner as if he had escaped from custody under process for an offence committed in that part of such territories in which he shall be found.

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* For the definition of the term "Magistrate" see S. 25.
† See Ss. 1, 21, 22.

XVIII. If a warrant be issued in any part of Her Majesty's dominions not under the Government of the East India Company, for the arrest of any person for any heinous* offence alleged to have been committed therein, or for the arrest of any person for any heinous* offence of which he may have been convicted by a Court of competent jurisdiction, in any such part of Her Majesty's dominions, any Magistrate† or Justice of the Peace within the territories under the Government of the East India Company, may, upon the production of such warrant and proof of the signature of the Officer signing it, and of his authority to issue the same, and without any further proof and without any order of Government, issue his warrant for the apprehension of the person accused, and after his apprehension may proceed to commit or hold him to bail in manner aforesaid, and to take such other proceedings as aforesaid as the case may require, but the person accused shall not be delivered over as aforesaid without an order of Government. The Government in such case shall have the same powers as if the proceedings had been taken in pursuance of an order of Government issued under this Act.

XIX. In cases in which the immediate apprehension within the British territories in India of any person accused of having committed any heinous offence mentioned in Section XXI. of this Act out of such territories shall, in the judgment of a Magistrate† or Justice of the Peace having jurisdiction in any part of such territories in which the person accused shall be found, be necessary for the ends of justice, the person accused may, without an order of Government, be apprehended or proceeded against in the same manner as for an offence charged to have been committed in the place where the person accused shall be found ; and after his apprehension, he may be committed or held to bail in manner aforesaid, and such other proceedings as aforesaid may be taken as the case may require, but the person accused shall not be delivered up without an order of Government. The Government in such case shall have the same powers as if the proceedings had been taken in pursuance of an order of Government issued under this Act.

XX. If any person imprisoned under this Act shall not either be delivered up or discharged or brought to trial within two calendar months after his committal, it shall be lawful for the principal court of original jurisdiction in criminal cases in the district in which he shall be imprisoned, upon application by or on behalf of the prisoner, to order him to be discharged out of custody, either upon giving such bail as the Court may order, or without bail, unless sufficient cause shall be shown to the Court why such discharge ought not to be ordered. Provided that no such order shall be made until after notice of the application, or of the intention to make the same, shall have been given to Government or to the Secretary or one of the Secretaries thereof.

XXI. The words "heinous offence" in this Act shall be deemed to include treason against Her Majesty committed in any part of Her Majesty's dominions, murder, attempting to murder, rape, great personal violence, maiming, dacoity, thuggee, robbery, burglary, knowingly receiving property obtained by dacoity, robbery or burglary, cattle-stealing, breaking and entering a dwelling-house and stealing therein, arson, setting fire to a village, house, or town, forgery or uttering forged documents, counterfeiting current coin, knowingly uttering base or counterfeit coin, perjury, subornation of

* Defined in Ss. 21, 22.
† For the definition of the term "Magistrate" see S. 25.

perjury, embezzlement whether by public Officers or other persons, and being an accessory to any of the above-mentioned offences.

XXII. The said words "heinous offence" in this Act shall also be deemed to include any offence for which by any treaty in force between Her Majesty or the East India Company, and any Foreign Prince or State, Her Majesty or the East India Company shall, at the time of making any requisition as aforesaid, be bound to deliver up offenders to the Foreign Prince or State making the same, and any other offence which in the judgment of the Government to whom the requisition shall be made, shall be serious or aggravated, and for which the person accused cannot be tried within the territories under the Government of the East India Company under the provisions of Act No. I. 1849.

XXIII. If by any such treaty Her Majesty or the East India Company shall be bound to deliver up to any Foreign Prince or State any person liable to be proceeded against by the laws of such Foreign Prince or State, in any case not expressly provided for by this Act, or in any manner other than that provided by this Act, it shall be lawful for the Government of any part of the territories under the Government of the East India Company, in which such person may be found, upon requisition made by or on the part of such Foreign Prince or State, to adopt such proceedings for carrying such treaty into effect, and for the surrender of such person, and for making any preliminary inquiry into the charge contained in the requisition, as it shall think fit, and any such order of the Government in writing, under the hand of one of the Secretaries of such Government, shall be a sufficient authority and justification for all acts to be done in execution thereof.

XXIV. Sections 5, 6, and 7, Reguluation XI. of 1827, of the Bombay Code, are repealed.

XXV. Unless where a contrary intention appears from the context, the word "Government," as used in this Act, shall be deemed to mean and include the Governor-General of India in Council, or the person or persons administering the Executive Government in any Presidency or place within the British territories in India. The words "British territories in India" shall include any part of the territories under the Government of the East India Company. The word "Magistrate," as used in this Act, is intended to include a Joint Magistrate, or any person lawfully exercising the powers of a Magistrate, and also a Justice of the Peace. Words in the singular number are intended to include the plural, and words in the masculine gender to include the feminine.

The following rules are in force in the Punjab, and have been introduced also in the North-West Provinces:—

The following translation of a Vernacular Proceeding of the Chief Commissioner, dated 28th May 1856, regarding surrender of offenders accused of heinous crimes, being subjects of a Foreign State, apprehended in British territory, and *vice versâ*, is published for general information.

Read a petition from Dewan Jaola Suhae, Prime Minister of Maharaja Goolab Singh Bahadoor, Ruler of Jummoo, dated 8th April last, relative to the demand and surrender on both sides (British and Jummoo Government) of persons accused of crimes as before, detailing the character of crimes, and soliciting suitable orders.

It is desirable that the same rules which are in force in accordance with the orders of Government in respect to the demand and surrender of offenders accused of heinous crimes between the British Government and the Foreign States would be made applicable to this state (Jummoo), so that the rule in this respect with regard to all the Foreign States may be uniform.

After examination of the office-record, a list of heinous crimes, for which parties committing them may be demanded or surrendered by either state, in accordance with the under-mentioned rules, is given below.

1. Abduction of a female, whether married or unmarried, without her consent, attended with tumult or assault.
2. Affray.
3. Arson or Incendiarism.
4. Assault, attended with violence and wounding, or the shedding of blood.
5. Burglary.
6. Counterfeiting coin.
7. Child-stealing.
8. Dacoity.
9. Forgery.
10. Homicide.
11. Convicts (under sentence of any of the crimes included in this category) escaped from prison.
12. Murder.
13. Administering poison.
14. Perjury.
15. Rape.
16. Highway robbery.
17. Selling females.
18. Thuggee.
19. Theft exceeding Rs. 50 in value.
20. Cattle-theft.

Except the 20 classes of crimes above enumerated, persons accused of petty theft under 50 Rs. value, or fornication (fel-i-shaneca), or petty assault, or defaulters of revenue, or debtors in a civil case, and the like, will not be liable to be demanded or surrendered on the part of either Government. In such cases the plaintiff, being a resident of Jummoo territory, will have the option of prosecuting his claim either in British Courts or in the Courts of the Jummoo Government. In the latter case, on the original proceedings of enquiry being forwarded by the Chief to a British Court, the claim of the prosecutor will be satisfied on its being substantiated in accordance with the established usage of the Court.

Rules for the apprehension, demand, and surrender of persons charged with heinous crimes, as enumerated below :—

Firstly.—Any person being a British subject having committed any crime of the class above enumerated in Jummoo territory, if apprehended in that territory, will be punishable by the Government of the country ; and, in like manner, any subject of the Jummoo Government, if apprehended in British territory for a crime committed in that territory, will be punishable by British Courts.

But the Maharaja may (if he so choose) forward a subject of the British Government so circumstanced to a British Court for trial and punishment.

Secondly.—If a subject of the Jummoo State should commit any crime of the classes enumerated above within British territory, or a subject of the British Government commit a crime in the Jummoo territory, and if the party, after committing such a crime, should escape to his home, then the British subject having committed crime in the Jummoo territory, if found in British territory, will not be liable to be demanded by the Jummoo Government. The Maharaja will, however, be at liberty to prosecute the party, through his servants, in British Court, which will award due punishment if the charges shall be proved after enquiry.

But the Jummoo subject who shall have escaped to that territory, and been traced there after having committed crime in British territory, will be liable to be sent to British Courts on being demanded by the British authorities.

Thirdly.—Subjects of either State, who should escape into Foreign territory after having committed any of the crimes above classified in their own territory, will be liable to be surrendered on being demanded by either Government : provided, however, that on demand being made on the British Government for the surrender of an offender of this class by the Maharaja, if the party accused shall have been residing in British territory for a period of less than six months, the Officer presiding in the local British Court shall, before giving up the party, institute a summary enquiry to ascertain whether the accused be really guilty of the charge brought against him to any extent, and should the guilt be imputable to

any extent to the prisoner, he will then be made over to the Jummoo Authorities. But if the party so demanded by the Jummoo Government shall have resided in British territory for more than six months, he will not be liable to be surrendered to the Jummoo Authorities, but will be liable to be prosecuted in a British Court, and punished on the charge being proved against him.

Fourthly.—If, on the occurrence of any crime in the Jummoo territory, tracks of the offender should be followed into British territory, it will be the duty of the servants of the Maharaja to inform the local Police Officers, and to take steps through their medium for the apprehension of the delinquent. The Maharaja's servants ought not to act independently of the British Police. The Police Officers of the British Government should not, however, surrender to the Maharaja's Officers any party who may be thus traced and apprehended without the permission of the District Court, whether he be a resident of Foreign or British territory. But it will be the duty of the Police to report immediately the circumstances to the British Court, and then to act as they may be directed.

Fifthly.—In like manner, if the track of any heinous crime committed within British territory should be pursued into the Jummoo territory by Officers of the British Police, they ought to inform the local Karder or Thannahdar, and take steps for the apprehension of the delinquent through the Maharaja's Police. But British Police Officers ought not to act independently of the local Officers of the Jummoo State.—*Extract from the Punjab Government Gazette, dated 25th December*, 1858.

In circulating these rules, the Agra Sudder Court (Circular No. 15 of 1866) added the following instructions:—

In the case of a Chief failing to comply with any requisition for a criminal's surrender, which a Magistrate of these Provinces may issue under the rules now promulgated, the Magistrate must make a reference in the first instance to the Punjab Divisional Commissioner in charge of the British political relations with such Chief, and ultimately, if necessary, to the Government of the Punjab.

Magistrates should be careful to make their requisitions in terms of the treaty, and to see that the acts alleged before them constitute such offence as is specified therein, though in their own proceedings Magistrates must use the nomenclatures of the offences committed as given in the Penal Code. For example, highway robbery in the day time would be an offence requiring the surrender of the accused under the treaty, but in the Indian Penal Code it would be a charge under the first part of S. 392. Other forms of simple robbery by day or by night would not be offences in which the accused must be surrendered.

APPENDIX D.

LAWS AND RULES RELATING TO POLICE.

ACT No. V. OF 1861.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor-General on the 22nd March, 1861).

An Act for the Regulation of Police.

Preamble.

WHEREAS it is expedient to re-organize the Police and to make it a more efficient instrument for the prevention and detection of crime; It is enacted as follows:—

Interpretation.

I. The following words and expressions in this Act shall have the meaning assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say:—

"Magistrate of the District"

The words "Magistrate of the District" shall mean the Chief Officer charged with the executive administration of a District and exercising the powers of a Magistrate, by

whatever designation the Chief Officer charged with such executive administration is styled.

"Magistrate." The word "Magistrate" shall include all persons within the General Police District, exercising all or any of the powers of a Magistrate.

"Police." The word "Police" shall include all persons who shall be enrolled under this Act.

"General Police District." The words "General Police District" shall embrace any Presidency, Province, or place, or any part of any Presidency, Province, or place, in which this Act shall be ordered to take effect.

"Property." The word "Property" shall include any moveable property, money, or valuable security.

Number. Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

Gender. Words importing the masculine gender shall include females.

"Person." The word "person" shall include a Company or Corporation.

"Month." The word "month" shall mean a calendar month.

"Cattle." The word "cattle" shall, besides horned cattle, include Elephants, Camels, Horses, Asses, Mules, Sheep, Goats, and Swine.

Constitution of the Force. II. The entire Police† Establishment under a Local Government* shall, for the purposes of this Act, be deemed to be one Police Force, and shall be formally enrolled; and shall consist of such number of Officers and men, and shall be constituted in such manner, and the members of such force shall receive such pay as shall from time to time be ordered by the Local Government,* subject to the sanction of the Governor-General of India in Council.

Superintendence in the Local Government. III. The superintendence of the Police† throughout a General Police District† shall vest in, and, subject to the general control of the Governor-General of India in Council, shall be exercised by the Local Government* to which such District is subordinate; and, except as authorized under the provisions of this Act, no person, Officer, or Court shall be empowered by the Local Government* to appoint, supersede, or control any Police Functionary.

Inspector-General of Police, &c. IV. The administration of the Police† throughout a General Police District† shall be vested in an Officer to be styled the Inspector-General of Police, and in such Deputy Inspectors-General and Assistant Inspectors-General as to the Local Government shall seem fit. The administration of the Police throughout the local jurisdiction of the Magistrate of the District† shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendents as the Local Government shall consider necessary. The Inspector-General and other Officers above-mentioned shall from time to time be appointed by the Local Government, and may be removed by the same authority.

* The Chief Commissioners of Oude, the Central Provinces, and British Burmah, have been vested with the powers of a Local Government under these Sections.—*Gazette of India of* 1868, p. 358.

† See definition in S. 1.

The administration of the Police throughout the local jurisdiction of the Magistrate of the District is vested in the District Superintendent of Police under the general control and direction of the Magistrate. The District Magistrate has no authority to interfere in the internal organization and discipline of the Police Force, but in other respects his position in relation to the Police is not materially changed. The District Superintendent is in fact an aid to the Magistrate for the superintendence of the Police of the District.

The Commissioners of Divisions will continue to exercise the same supervision over the Magistrates in respect to the administration of Police and Criminal Justice which they have hitherto exercised as Superintendents of Police, but they will not in any way interfere with the details of the organization of the Police. Commissioners of Divisions must bear in mind that they are responsible, as heretofore, for the entire executive administration of their Divisions.

The Inspector-General will confine his attention principally to the general control, and the Deputy Inspectors-General to the inspection and discipline of the Police Force. The Inspector and Deputy Inspectors-General should be moving about from District to District for at least eight months in the year.

The District Superintendent is the head of the Police Force employed in the District. He is, therefore, responsible to the Magistrate for the efficient performance of the duties devolving upon the Force. It is his duty to see that all orders of the Magistrate, or other competent authority, are promptly and correctly carried out.—*Resn. Govt. of Bengal, dated 22nd September* 1862.

The several Deputy Inspectors-General and District Superintendents of Police are hereby vested with the powers of a Magistrate within all the Districts comprised in the Commissioner's Division within which they serve. The powers thus conferred upon the above-named Officers, and the powers of a Magistrate vested by law in the Inspector-General, will be exercised, so far as may be necessary, in the absence of a Magistrate, only for the preservation of the peace, the prevention or detection of crime, or the apprehension or detention of offenders, and also for the trial of cases under S. 29. Act V. of 1861. Provided that in all cases in which persons not belonging to the Police Force are concerned, and in cases in which a Police Officer is charged with offering any unwarrantable personal violence to any person in his custody, the trial shall not be held by an Officer of the Police Force. District Superintendents may also exercise the powers of a Magistrate under Act XX. of 1856.—*Resn. Govt. of Bengal, dated 22nd September*, 1862.

Inspector-General to have powers of a Magistrate.

To exercise them under the orders of Government.

V. The Inspector-General of Police shall have the full powers of a Magistrate throughout the General Police District,† but shall exercise those powers subject to such limitation as may from time to time be imposed by the Local Government.*

Deputy Inspectors-General, &c., may be vested with powers of a Magistrate.

In what cases those powers shall be exercised.

VI. The Local Government* may vest any Deputy Inspector-General, Assistant Inspector-General, District Superintendent, or Assistant District Superintendent of Police with all or any of the powers of a Magistrate within such limits as it may deem proper; but such Officers respectively shall exercise the powers with which they shall be so invested only so far as may be necessary for the preservation of the peace, the prevention of crime, and the detection, apprehension, and detention of offenders, in order to their being brought before a Magistrate, and, so far as may be necessary, for the performance of the duties assigned to them by this Act.

Inspector-General, &c. to appoint and dismiss.

VII. The appointment of all Police Officers other than those mentioned in Section IV. of this Act shall, under such rules as the Local Government* shall from time to time sanction, rest with the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General, and District Superintendents of Police, who may, under

* The Chief Commissioners of Oude, the Central Provinces, and British Burmah, have been vested with the powers of a Local Government under these Sections.—*Gazette of India* of 1868, p. 358.

† See definition in S. 1.

such rules as aforesaid, at any time dismiss, suspend, or reduce any Police Officer whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same, or fine any Police Officer to any amount not exceeding one month's pay, who shall discharge his duty in a careless or negligent manner, or who by any act of his own shall render himself unfit for the discharge thereof.

No Magistrate has any power to inflict punishment, nor has he any jurisdiction under this Section, except that the Magistrate of the District can, in the exerise of his "general control and direction," recommend the adoption of a particular course to the District Superintendent.—Agra Sudder Court, Cir. 17 A. 1865.

The following Rules under this Section have been promulgated by the Government of Bengal, Resolution No. 464, *May* 16, 1862:—

1. District Superintendents may appoint Constables, and may dismiss, suspend, reduce, or fine all such Constables without appeal, except in the case of Constables of more than four years' service, who shall be allowed an appeal from sentences of suspension or dismissal only to the Deputy Inspector-General of the Division.

2. District Superintendents may nominate, for the approval of the Deputy Inspector-General of the Division, Head Constables, and Sub-Inspectors, and may dismiss, suspend, reduce, or fine such Head Constables and Sub-Inspectors, subject to an appeal to the Deputy Inspector-General, whose decision shall be final.

3. District Superintendents may in like manner nominate Inspectors for the approval of the higher Officers of Police and of Government, and may dismiss, suspend, reduce, or fine such Inspectors, subject to an appeal to the Deputy Inspector-General, whose decision shall be final, except in cases of dismissal, when a further appeal only shall lie to the Inspector-General.

4. No Officer of Police shall be suspended from office for a longer period than six months.

5. Petitions of appeal against sentences or orders passed under these Rules must be presented within thirty days immediately following, and exclusive of the day on which the sentence or order appealed against is passed.

Fines imposed under S. 7 are in Bengal, under orders of Government, to be credited to the Police Superannuation Fund under S. 11.—*Government Resolution, dated 22nd September,* 1862.

Police Officer to receive certificates of Office.

VIII. Every Police Officer, so appointed, shall receive on his appointment a certificate in the form annexed to this Act, under the seal of the Inspector-General or such other Officer as the Inspector-General shall appoint, by virtue of which the person holding such certificate shall be vested with the powers, functions, and privileges of a Police Officer. Such certificate shall cease to have effect whenever the person named in it is suspended or dismissed or otherwise removed from employment in the Police Force, and shall be immediately surrendered to the Superior Officer of such person or to some other Officer empowered to receive the same.

Police Officers not to resign without leave or two months' notice.

IX. No Police Officer shall be at liberty to withdraw himself from the duties of his office unless expressly allowed to do so by the District Superintendent or by some other Officer authorized to grant such permission, or, without the leave of the District Superintendent, to resign his office, unless he shall have given to his Superior Officer notice in writing, for a period of not less than two months, of his intention to resign.

Police Officers not to engage in other employment.

X. No Police Officer shall engage in any employment or office whatever other than his duties under this Act, unless expressly permitted to do so in writing by the Inspector-General.

XI. There shall be deducted from the pay of every Police Officer of a class not entitled to the benefit of the Uncovenanted Service Pension Rules, a sum after such rate as the Local Government* shall direct, not being a greater rate than one anna in the Rupee. The sum so deducted, together with the amount of any saving from the stoppages from the pay of Police Officers during absence from sickness or other cause, and of fines imposed on Police Officers for misconduct, and by Magistrates upon drunken persons, or for assaults upon Police Officers, and any money arising from the sale of worn or cast-off clothing or other articles supplied for the use of the Police, or from any other source which shall be authorized by the Local Government,* shall from time to time be invested in such manner and in such securities as the Local Government* may direct, and the interest and dividends thereof, or so much of the same as shall not be required for the purposes herein mentioned, shall be likewise invested as aforesaid, and accumulate, so as to form a Fund to be called "The Police Superannuation Fund," and shall be applied from time to time to the payment of superannuation or retiring allowances or gratuities, under such rules as may be passed by such Local Government.* Provided that any Police Officer may be dismissed or removed without a superannuation allowance, and that no Police Officer shall be entitled as of right to any allowance from the said Fund, or shall retain any right to a refund of any deduction made from his pay while he shall have been a Police Officer.

Police Superannuation Fund.

Proviso.

The rules passed by the Government of Bengal for the constitution of the Superannuation Pension Fund are to be found in the Resolution of Government which follows Act V. of 1861.

XII. The Inspector-General of Police may, from time to time, subject to the approval of the Local Government,* frame such orders and rules as he shall deem expedient, relative to the organization, classification, and distribution of the Police Force, the places at which the members of the force shall reside, and the particular services to be performed by them; their inspection, the description of arms, accoutrements, and other necessaries to be furnished to them; the collecting and communicating by them of intelligence and information; and all such other orders and rules relative to the Police Force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties.

Inspector-General to make Rules.

No special guard shall be supplied to private persons without the authority of the Magistrate of the District, who shall at once report to the Commissioner the circumstance under which he sanctions any such guard. Before such guards are furnished, the District Superintendent must require the deposit of a sum of money sufficient to defray their cost. Provided that if such guards are required for any period in excess of one month, the deposit of one month's pay in advance will suffice.—*Resn. Govt. of Bengal, dated 22nd September*, 1862.

XIII. It shall be lawful for the Inspector-General of Police, or any Deputy Inspector-General or Assistant Inspector General, or for the District Superintendent, subject to the general direction of the Magistrate of the District,† on the application

Additional Police Officers employed at the cost of individuals.

* The powers of a Local Government under these Sections have been conferred on the Chief Commissioners of Oude, the Central Provinces, and British Burmah.—*Gazette of India* of 1868, p. 358.

† See definition in S. 1.

of any person showing the necessity thereof, to depute any additional number of Police Officers to keep the peace at any place within the General Police District,† and for such time as shall be deemed proper. Such force shall be exclusively under the orders of the District Superintendent, and shall be at the charge of the person making the application. Provided that it shall be lawful for the person on whose application such deputation shall have been made, on giving one month's notice in writing to the Inspector-General, Deputy Inspector-General, or Assistant Inspector-General, or to the District Superintendent, to require that the Police Officers so deputed shall be withdrawn; and such person shall be relieved from the charge of such additional force from the expiration of such notice.

Appointment of additional Force in the neighbourhood of Railway and other works.

XIV. Whenever any railway, canal, or other public work, or any manufactory or commercial concern, shall be carried on, or be in operation in any part of the country, and it shall appear to the Inspector-General that the employment of an additional Police Force† in such place is rendered necessary by the behaviour, or reasonable apprehension of the behaviour of the persons† employed upon such work, manufactory, or concern, it shall be lawful for the Inspector-General, with the consent of the Local Government,* to depute such additional force to such place, and to employ the same so long as such necessity shall continue, and to make orders from time to time upon the persons* having the control or custody of the Funds used in carrying on such work, manufactory, or concern, for the payment of the extra force so rendered necessary, and such person† shall thereupon cause payment to be made accordingly.

Quartering of additional Police in disturbed or dangerous Districts.

XV. It shall be lawful for the Inspector-General of Police, with the sanction of the Local Government,† to be notified by proclamation in the Government Gazette, and in such other manner as the Local Government* shall direct, to employ any Police Force† in excess of the ordinarily fixed complement, to be quartered in any part of the General Police District† which shall be found to be in a disturbed or dangerous state, or in any part of the General Police District† in which, from the conduct of the inhabitants, he may deem it expedient to increase the number of Police. The inhabitants of the part of the country described in the notification shall be charged with the cost of such additional Police Force,† and the Magistrate of the District,* after enquiry, if necessary, shall assess the proportion in which the amount is to be paid by the inhabitants according to his judgment of their respective means.

Payment of money for support of additional Police Force.

XVI. All monies payable under the last three preceding Sections, on account of any additional Police Force employed as therein directed, shall be recoverable under the warrant of a Magistrate* by distress and sale of the goods of the defaulter within the District of such Magistrate, or by suit in any competent Court; and the monies paid on this account or so recovered shall be credited to a Fund to be called "The General Police Fund," and shall be applied to the maintenance of the Police Force† under such orders as the Local Government* shall pass.

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* The powers of a Local Government under this Section have been conferred on the Chief Commissioners of Oude, the Central Provinces, and British Burmah.—*Gazette of India of* 1868, p. 358.

† See definition in S. 1.

Special Police Officers.

XVII. When it shall appear that any unlawful assembly* or riot† or disturbance of the peace has taken place, or may be reasonably apprehended, and that the Police Force§ ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly, or riot, or disturbance of the peace has occurred, or is apprehended, it shall be lawful for any Police Officer not below the rank of Inspector, to apply to the nearest Magistrate§ to appoint so many of the residents of the neighbourhood as such Police Officer may require to act as Special Police Officers for such time and within such limits as he shall deem necessary; and the Magistrate to whom such application is made shall, unless he see cause to the contrary, comply with the application.

Powers of Special Police Officers.

XVIII. Every Special Police Officer so appointed shall have the same powers, privileges, and protection, and shall be liable to perform the same duties, and shall be amenable to the same penalties, and be subordinate to the same authorities as the ordinary Officers of Police.

Refusal to serve as Special Police Officers.

XIX. If any person being appointed a Special Police Officer§ as aforesaid shall, without sufficient excuse, neglect, or refuse to serve as such, or to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable, upon conviction before a Magistrate,§ to a fine not exceeding fifty Rupees for every such neglect, refusal, or disobedience.

Authority to be exercised by Police Officers.

XX. Police Officers, enrolled under this Act, shall not exercise any authority, except the authority provided for a Police Officer under this Act and any Act which shall hereafter be passed for regulating Criminal Procedure.‡

Village Police Officers.

XXI. Nothing in this Act shall affect any hereditary or other Village Police Officer, unless such Officer shall be enrolled as a Police Officer under this Act. When so enrolled, such Officer shall be bound by the provisions of the last preceding Section. No hereditary or other Village Police Officer shall be enrolled without his consent and the consent of those who have the right of nomination. If any Police Officer appointed under Act XX. of 1856 *(to make better provision for the appointment and maintenance of Police Chowkeedars in Cities, Towns, Stations, Suburbs, and Bazaars in the Presidency of Fort William in Bengal)* is employed out of the District for which he shall have been appointed under that Act, he shall not be paid out of the rates levied under the said Act for that District.

All cities, towns, or unions, in which Act XX. of 1856 is in force, shall defray so much of the cost of the Police allotted to them as shall be determined on by the Inspector-General in communication with the Magistrate of the District, the balance being met from the Police assignment. The Magistrates of Districts must be careful to provide adequately for this demand upon their Municipal Funds. The Municipal Fund of a city, town, or union, will, under no circumstances, contribute more towards the General Police Fund than is actually paid for the Police employed within its limits, and the amount contributed shall not ordinarily exceed what would be sufficient for the watch and ward contemplated by Act XX. of 1856. The surplus will, as hitherto, be employed for conservancy and other

* Defined in S. 141 of the Indian Penal Code.
† Defined in S. 146 of the Indian Penal Code.
‡ That is, Act XXV. of 1861.
§ See Definition in S. 1.

Municipal purposes. If in any city, town, or union, a majority of the rate-payers object to the abolition of the old Watch and ward, the new Police shall not be substituted for the Municipal Chowkeedars, except under the special orders of Government. Care must be taken that, when Municipal Police are employed out of the city, town, or union, for which they are appointed under Act XX. of 1856, they shall not be paid out of the rates levied under the said Act for that city, town, or union.—*Resn. Govt. of Bengal, dated 22nd September*, 1862.

Police Officers to be considered always on duty, and may be employed in any part of the General Police District.

XXII. Every Police Officer* shall, for all purposes in this Act contained, be considered to be always on duty, and may at any time be employed as a Police Officer in any part of the General Police District.*

Duties of Police Officers.

XXIII. It shall be the duty of every Police Officer* promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances†; to detect and bring offenders to justice; and to apprehend all persons whom he is legally authorised to apprehend, and for whose apprehension sufficient ground exists: and it shall be lawful for every Police Officer, for any of the purposes mentioned in this Section, without a warrant, to enter and inspect any drinking shop, gaming house, or other place of resort of loose and disorderly characters.

Police Officer may lay information, &c.

XXIV. It shall be lawful for any Police Officer* to lay any information before a Magistrate,* and to apply for a summons,‡ warrant,§ search warrant,‖ or such other legal process as may by law issue against any person committing an offence, and to prosecute such person up to final judgment.

Police Officers to take charge of unclaimed property, and to be subject to Magistrate's orders as to the disposal of it.

XXV. It shall be the duty of every Police Officer* to take charge of all unclaimed property,* and to furnish an inventory thereof to the Magistrate of the District.* The Police Officers shall be guided as to the disposal of such property by such orders as they shall receive from the Magistrate of the District.*

Magistrate may detain property and issue proclamation.

XXVI. The Magistrate of the District* may detain the property* and issue a proclamation, specifying the articles of which it consists, and requiring any person who has any claim thereto to appear and establish his right to the same within six months from the date of such proclamation.

Confiscation of property if no claimant appear.

XXVII. If no person shall, within the period allowed, claim such property, it may be sold under the orders of the Magistrate of the District,* and the proceeds shall be at the disposal of Government.

The proceeds in Bengal are, under orders of Government, credited to the Superannuation Pension Fund, formed under S. 11.—*Government Resolution, dated 22nd September*, 1862.

Persons refusing to deliver up certificate, &c., on ceasing to be Police Officers.

XXVIII. Every person, having ceased to be an enrolled Police Officer under this Act, who shall not forthwith deliver up his certificate, and the clothing, accoutrements, appointments, and other necessaries which shall have been supplied to him for the execution of his duty, shall be liable, on convic-

* See definition in S. 1.
† Defined in S. 268 of the Indian Penal Code.
‡ See S. 164 *et seq.* of the Code of Criminal Procedure.
§ See S. 176 *et seq.* of the Code of Criminal Procedure.
‖ See S. 114 *et seq.* of the Code of Criminal Procedure.

tion before a Magistrate,* to a penalty not exceeding two hundred Rupees, or to imprisonment, with or without hard labour, for a period not exceeding six months, or to both.

Penalties for neglect of duty, &c.

XXIX. Every Police Officer* who shall be guilty of any violation of duty or wilful breach or neglect of any rule orregulation or lawful order made by competent authority; or who shall withdraw from the duties of his Office without permission, or without having given previous notice for the period of two months; or who shall engage without authority in any employment other than his Police duty; or who shall be guilty of cowardice, or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate,* to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour, for a period not exceeding three months, or to both.

The commission by a Police Officer, duly enrolled under Act V. of 1861, of an act punishable under S. 29, should be dealt with under that law rather than under S. 166, Penal Code.—*5 Agra, 59.*

A Sessions Judge has no authority to convict under S. 29 Act V. of 1861 (Indrobee Shaha, 1 W. R., 5; Bhobun Singh, 9 W. R., 36); but any Magistrate can (4 W. R., 2). Without a complaint, however, no Magistrate, except the Magistrate of the District or Magistrate in charge of a Division of a District, in whom special authority is vested by S. 68, Code of Criminal Procedure, can take cognizance of such a matter. The Government of the Upper Provinces has expressed a strong wish that the Magistrate of the District should, under S. 36 of the Code, call to his own file all cases in which the Police Officers are charged with offences of the nature described in S. 29 Act V. of 1861.—Agra Sudder Court, Circular 17A, 1865.

"Unwarrantable personal violence to any person in his custody."—S. 42 lays down certain limitations on actions and prosecutions instituted against Police Officers.

Fines imposed under S. 29 on Police Offiers for misconduct or neglect of duty are in Bengal, under order of Government, credited to the Police Superannuation Fund formed under S. 11.—*Government Resolution, dated 22nd September*, 1862.

Regulation of public processions, &c.

XXX. The District Superintendent and Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads, or in the public streets, or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass. They may also regulate the use of music in the streets on the occasion of festivals and ceremonies.

Police to keep order in public roads, &c.

XXXI. It shall be the duty of the Police to keep order on the public roads, and in the public streets, thoroughfares, ghauts, and landing places, and at all other places of public resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads, and in the public streets, or in the neighbourhood of places of worship during the time of public worship, and in any case when any road, street, thoroughfare, ghaut, or landing place may be thronged or may be liable to be obstructed.

Penalty for disobeying orders issued under last two Sections, &c.

XXXII. Every person opposing or not obeying the orders issued under the last two preceding Sections, or violating the conditions of any license granted by the District Superintendent or Assistant District Superintendent of Police for the use of music, or for the conduct of assemblies and processions, shall be liable, on conviction before a Magistrate,* to a fine not exceeding two hundred Rupees.

* See definition in S. 1.

XXXIII. Nothing in the last three preceeding Sections shall be deemed to interfere with the general control of the Magistrate of the District* over the matters referred to therein.

Control of the Magistrate of the District under last three Sections.

XXXIV. Any person who, on any road or in any street or thoroughfare within the limits of any Town to which this Section shall be specially extended by the Local Government,†‡ commits any of the following offences, to the obstruction, inconvenience, annoyance, risk, danger, or damage of the residents and passengers, shall, on conviction before a Magistrate,* be liable to a fine not exceeding fifty Rupees, or to imprisonment not exceeding eight days; and it shall be lawful for any Police Officer* to take into custody, without a warrant, any person who within his view commits any of such offences, namely:—

Certain duties of Police Officers.

Obstructions and nuisances in roads.

First.—Any person who slaughters any cattle,* or cleans any carcass; any person who rides or drives any cattle* recklessly or furiously, or trains or breaks any horse or other cattle.*

Slaughtering cattle, furious riding, &c.

Second.—Any person who wantonly or cruelly beats, abuses, or tortures any animal.

Cruelty to animals.

Third.—Any person who keeps any cattle* or conveyance of any kind standing longer than is required for loading or unloading or for taking up or setting down passengers, or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public.

Obstructing passengers.

Fourth.—Any person who exposes any goods for sale.

Exposing goods for sale on roads.

Fifth.—Any person who throws or lays down any dirt, filth, rubbish, or any stones or building materials; or who constructs any cowshed, stable, or the like; or who causes any offensive matter to run from any house, factory, dung-heap, or the like.

Throwing dirt into street.

Sixth.—Any person who is found drunk or riotous, or who is incapable of taking care of himself.

Being found drunk in any thoroughfare.

Fines imposed on drunken persons are in Bengal, under orders of Government, credited to the Police Superannuation Fund under S. 11.—*Government Resolution, 22nd September, 1862.*

Seventh.—Any person who wilfully and indecently exposes his person, or any offensive deformity or disease, or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose.

Indecent exposure of person.

Eighth.—Any person who neglects to fence in, or duly to protect any well, tank, or other dangerous place or structure.

Neglect to protect dangerous places.

XXXV. In all cases of convictions under this Act, the Officer trying the case shall be limited to his ordinary jurisdiction as to the amount of fine or imprisonment which he may inflict; provided that any charge against a Police Officer above the

Jurisdiction.

Proviso.

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* See definition in S. 1.

† The powers of a Local Government under this Section have been conferred on the Chief Commissioners of Oude, the Central Provinces, and British Burmah.—*Gazette of India* of 1868, p. 358.

‡ Extended very generally to large towns in the Upper Provinces of Bengal.—*Government Resolution*, 769A, *dated 2nd July*, 1861.

rank of a Constable under this Act shall be enquired into and determined only by an Officer exercising the powers of a Magistrate.*

Power to prosecute not affected.

XXXVI. Nothing contained in this Act shall be construed to prevent any person from being prosecuted under any other Regulation or Act for any offence made punishable by this Act, or from being liable under any other Regulation or Act to any other or higher penalty or punishment than is provided for such offence by this Act. Provided that no person shall be punished twice for the same offence.

Proviso.

Levy of forfeiture and penalties by distress.

XXXVII. All forfeitures or penalties imposed under the authority of this Act for offences punishable by a Magistrate* may, in case of non-payment thereof, be levied by distress and sale of the property* of the offender within the limits of the jurisdiction of the Magistrate of the District,* by warrant under the hand of the Magistrate who made the order.

Procedure until return is made to warrant of distress.

XXXVIII. In case any such forfeiture or penalty shall not be forthwith paid, the Magistrate may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security, to the satisfaction of the Magistrate, for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

Imprisonment if distress not sufficient.

XXXIX. If upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of the Magistrate by the confession of the offender or otherwise, that he has not sufficient property whereupon such fine or sum of money could be levied if a warrant of distress were issued, the Magistrate may, by warrant under his hand, commit the offender, provided he is not a European British subject, to prison, there to be imprisoned, according to the discretion of the Magistrate, for any term not exceeding two calendar months when the amount of fine shall not exceed fifty Rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred Rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.

Levy of fines from European British subjects.

XL. If the offender be a European British subject, the Magistrate shall record the facts and transmit such record to the District Court of the District wherein the offender is convicted, and the amount of the fine and costs (if any) shall be levied in the manner provided for the execution of decrees of the Civil Court.

Rewards to Police and informers payable to General Police Fund.

XLI. All sums paid for the service of process by Police Officers, and all rewards, forfeitures, and penalties or shares of rewards, forfeitures, and penalties which by law are payable to informers, shall, when the information is laid by a Police Officer, be paid into the General Police Fund.

Limitation of action.

XLII. All actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general Police powers hereby given, shall be commenced within three months

* See definition in S. 1.

after the act complained of shall have been committed, and not otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant, or to the District Superintendent, or an Assistant District Superintendent of the District in which the act was committed, one month at least before the commencement of the action. No plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant, and though a decree shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial is held, shall certify his approbation of the action. Provided always that no action shall in any case lie where such Officers shall have been prosecuted criminally for the same act.

Tender of amends.

Proviso.

The Agra Sudder Court (Circular 23, 1862) has ordered that in all criminal prosecutions instituted under S. 42, notice in writing of such prosecution and of the cause thereof shall be at once given to the District Superintendent. A Police Officer accused of a criminal offence cannot successfully plead the limitation in S. 42 Act V. of 1861, unless he can show that in committing the offence charged he was exercising his Police functions. He cannot use his Police functions for doing any act which is an offence under the Penal Code.—6 Agra, 16.

XLIII. When any action or prosecution shall be brought or any proceedings held against any Police Officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate. Such plea shall be proved by the production of the warrant directing the act, and purporting to be signed by such Magistrate, and the defendant shall thereupon be entitled to a decree in his favor, notwithstanding any defect of jurisdiction in such Magistrate. No proof of the signature of such Magistrate shall be necessary, unless the Court shall see reason to doubt its being genuine. Provided always that any remedy which the party may have against the authority issuing such warrant shall not be affected by anything contained in this Section.

Plea that act was done under a warrant.

Proviso.

XLIV. It shall be the duty of every Officer in charge of a Police Station to keep a General Diary in such form as shall, from time to time, be prescribed by the Local Government,* and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined. The Magistrate of the District† shall be at liberty to call for and inspect such Diary.

Police Officers to keep a Diary.

XLV. The Local Government* may direct the submission of such Returns by the Inspector-General and other Police Officers as to such Local Government* shall seem proper, and may prescribe the form in which such Returns shall be made.

Local Government empowered to prescribe the form of Returns.

* The powers of a Local Government under these Sections have been conferred on the Chief Commissioners of Oude, the Central Provinces, and British Burmah.—*Gazette of India* of 1868, p. 258.

† See definition in S. 1.

Scope of Act.

XLVI. This Act shall not take effect in any Presidency, Province, or place, unless the same shall be extended to such Presidency, Province, or place by the Governor-General of India in Council by an order to be published in the Government Gazette. When the Act shall have been so extended, it shall be carried into effect in such Presidency, Province, or place as the Local Government,* by an order to be published in the Official Gazette, shall direct.

Authority of District Superintendent of Police over Village Police.

XLVII. It shall be lawful for the Local Government,* in carrying this Act into effect in any part of the territories subject to such Local Government,* to declare that any authority which now is or may be exercised by the Magistrate of the District* over any Village Watchman or other Village Police Officer for the purposes of Police, shall be exercised, subject to the general control of the Magistrate of the District,* by the District Superintendent of Police.

FORM *(See Section VIII).*

A. B. has been appointed a Member of the Police Force, under Act V. of 1861, and is vested with the powers, functions, and privileges of a Police Officer.

GOVERNMENT OF BENGAL.

JUDICIAL.

Police.

Fort William, the 22nd September, 1862.

RESOLUTION.

READ Act No. V. of 1861.

Read Resolution of the Right Hon'ble the Governor-General of India in Council, in the Home Department, dated the 4th November 1861, No. 2005.

The Lieutenant-Governor is pleased to prescribe the following Rules for regulating the administration of the Police in those Districts to which Act No. V. of 1861 has been, or may hereafter be, extended :—

I. The administration of the Police throughout the local jurisdiction of the Magistrate of the District is vested in the District Superintendent of Police under the general control and direction of the Magistrate. The District Magistrate has no authority to interfere in the internal organization and discipline of the Police Force, but in other respects his position in relation to the Police is not materially changed. The District Superintendent is in fact an aid to the Magistrate for the superintendence of the Police of the District.

II. The Commissioners of Divisions will continue to exercise the same supervision over the Magistrates in respect to the administration of Police and Criminal Justice which they have hitherto exercised as Superintendents of Police ; but they will not in any way interfere with the details of the organization of the Police. Commissioners of Divisions must bear in

* The powers of a Local Government under this Section have been conferred on the Chief Commissioners of Oude, the Central Provinces, and British Burmah.—*Gazette of India of* 1868, p. 308.

mind that they are responsible, as heretofore, for the entire executive administration of their Divisions.

III. The Inspector General will confine his attention principally to the general control, and the Deputy Inspectors General to the inspection and discipline, of the Police Force. The Inspector and Deputy Inspectors General should be moving about from District to District for at least eight months in the year.

IV. The District Superintendent is the Head of the Police Force employed in the District. He is, therefore, responsible to the Magistrate for the efficient performance of the duties devolving upon the Force. It is his duty to see that all orders of the Magistrate or other competent Authority are promptly and correctly carried out.

Communication between Magistrates and Police.

V. All Reports which the Law requires to be made to the Magistrate of the District, or to a Magistrate having jurisdiction, must generally be made by the subordinate Police to the District Superintendent or Officer acting on his behalf; and it will be the duty of the Superintendent or other Officer either to pass orders thereon, or, if beyond his competence to deal with, to lay all such Reports, and all information and Returns, before the Magistrate. The subordinate Police may, however, report direct to the Magistrate when necessary.

VI. All orders of the Magistrate to the subordinate Police will be conveyed to the Head Officer of Police in attendance in the Court of the Magistrate for communication to the subordinate Officers concerned. The orders of the Magistrate will either be in the shape of Warrants, Summons, Subpœnas, or other process, or will take the form of specific instructions on special points.

VII. All orders other than Warrants or other processes will be entered in an Order Book to be kept for the purpose in each Magistrate's Court. They will thus come regularly under the notice of the District Superintendent, who should, if possible, have his Office in the Magistrate's Cutcherry. Warrants or other processes will be entered in the Register in a form to be prescribed by the Inspector General.

VIII. In communicating orders to the District Police, it is not necessary that separate orders or Perwannahs should be addressed. All that is requisite is to send each Inspector an extract from the Order Book containing all orders applicable to him that have been issued during the day. These extracts, when received by the Police Officer to whom they are addressed, will be entered, according to date of receipt, in his Station Order Book, and, as soon as the orders have been carried out, the extract will be returned with a brief endorsement shewing the manner of execution.

IX. It will be necessary to bear in mind the distinction between the "Magistrates of the District" and "a Magistrate." The "Magistrate of the District" is the Chief Officer charged with the Executive Administration of the District in Criminal matters; "a Magistrate" includes all persons exercising any of the powers of a Magistrate, such as Joint, Assistant, and Deputy Magistrates.

X. The District Superintendent will, without delay, inform the Magistrate of the District of any circumstance within the knowledge of the Police likely to lead to a disturbance or breach of the peace. Should any difference

of opinion, on any question relating to Police Administration, arise between the District Superintendent and the Magistrate of the District, it is the duty of the District Superintendent to carry out the Magistrate's instructions, and to request the Magistrate to refer the point under dispute for the orders of the Commissioner, who will decide all such references, communicating, when necessary, with the Inspector or Deputy Inspector General. Any Officer of the Police who is dissatisfied with the decision of the Commissioner may submit his case to the Inspector General.

XI. It must be borne in mind that, with the exception of the Magistrate of the District, no Magisterial Officers, whether in charge of a Sub-Division or not, are vested with any controlling authority over the Police. As Judicial Officers they will try all cases brought before them by the Police, and will issue processes in the manner above described in such cases, or in cases instituted before them on the formal complaint of a private party. If a subordinate Magistrate is of opinion that, in any case coming before him, the proceedings of the Police have been illegal, or evince negligence or want of intelligence, he will report the matter for the information of the Magistrate of the District.

XII. Every Prisoner must be forwarded from a Police Station direct to the nearest Magistrate having jurisdiction, and must not be sent to the next superior Officer of Police.

Powers of Police Officers.

XIII. The several Deputy Inspectors General and District Superintendents of Police are hereby vested with the powers of a Magistrate within all the Districts comprised in the Commissioner's Division within which they serve. The power thus conferred upon the above-named Officers, and the powers of a Magistrate vested by Law in the Inspector General, will be exercised, so far as may be necessary, in the absence of a Magistrate, only for the preservation of the peace, the prevention or detection of crime, or the apprehension or detention of offenders, and also for the trial of cases under Section 29, Act. No. V. of 1861. Provided that in all cases in which persons not belonging to the Police Force are concerned, and in cases in which a Police Officer is charged with offering any unwarrantable personal violence to any person in his custody, the trial shall not be held by an Officer of the Police Force. District Superintendents may also exercise the powers of a Magistrate under Act No. XX. of 1856.

Police Superannuation Fund.

XIV. The Police Superannuation Fund shall be formed from the following items :—

1st.—A deduction of half an anna in the rupee from the monthly pay of all Police Officers of a class not entitled to a pension under the Uncovenanted Service Pension Rules.

2nd.—Savings from the pay of Police Officers absent from sickness or on leave; such savings are, however, only available for the Fund after the deduction of all acting allowances.

3rd.—Fines imposed for neglect or misconduct of Police Officers under Sections 7 and 29 of Act V. of 1861 ; and fines imposed by Magistrates on drunken persons, or on persons convicted of assault on Police Officers.

4th.—Proceeds of sale of useless and worn-out equipments, or articles of clothing provided for the use of the Police by the State.

5th.—Proceeds of unclaimed property sold under Section 27, Act V. of 1861.

XV. No fines imposed on Police Officers by their superior Officers, in cases in which an appeal is allowed, shall be credited to the Superannuation Fund until the orders imposing them have been confirmed by the Inspector General.

XVI. It will be the duty of all Magisterial Officers to keep up a separate Register of all fines imposed by them under the third head. The fines realized will be sent to the Collector of the District, who will credit the amount, under its proper heading, to the Police Superannuation Fund, as hereinafter directed. At the close of each month the Magistrate of the District will send to the District Superintendent an Abstract from the Registers shewing all the fines thus imposed in his District. No fines can be credited to the Fund until the money has been actually realized; and when the order is appealable, until the appeal has been finally disposed of.

XVII. In like manner the Magistrate of each District, at the close of each month, will deposit with the Collector the nett amount realized by the sale of unclaimed property during the month after deducting the usual commission (not exceeding 5 per cent.), which should be allowed to the persons employed to conduct the sale.

XVIII. The Magistrate shall transmit to the District Superintendent a monthly Return of all sums deposited with the Collector on account of the Fund.

XIX. No charges on the Superannuation Fund are to be made without the sanction of the Government previously obtained. Rules as to the period of service and other conditions entitling Members of the Force to Pensions or Gratuities from the Fund will be published separately.

XX. Officers in charge of Treasuries will credit deposits with all sums deducted from Pay Abstracts by the Civil Pay Master on account of the Police Superannuation Fund. These deductions should be noted on the Pay Abstracts by the submitting Officer, but checked by the Civil Pay Master in the same way as those of other service Funds. Collectors will also credit to the same head all other monies of the nature described in Section 11 remitted to the Treasury by any Officer either of Police or of the Magistracy.

XXI. Any refunds of assets so credited must be charged to deposits; and if the actual deposit has been remitted to Calcutta, the charge must be made against the next deposit which is placed at credit of the Fund.

XXII. Collectors will, at the close of each month, remit the balance in their hands to the Secretary to the Bank of Bengal by transfer receipts, filling up the form thus—

'To be transferred to credit of the Police Superannuation Fund at the Bank of Bengal as per particulars on the reverse—

Deductions.
Savings.
Fines on Police.
Fines by Magistrate.
Sale of clothing, &c."

XXIII. The Deputy Auditor and Accountant General will prepare from the Bank's account a Statement in the annexed form (A.) shewing the state of the Fund at the close of each month, and send it to the Inspector General of Police for information.

XXIV. When there is an accumulation of Funds sufficient for investment in Treasury Notes, the Deputy Auditor and Inspector General will make a joint application to the Auditor General (accompanied by a Certificate in the prescribed form B.) for the issue of a Treasury Note in their favor for the amount of the Certificate in even hundreds of Rupees, bearing interest at the rate of 5 per cent. per annum from the date of the Certificate, which, for convenience of calculating interest, should always be the 1st of a month.

XXV. On the issue of the Treasury Notes by the Auditor General of India, the Deputy Auditor General, Bengal, and Inspector General of Police, will lodge them with the Bank of Bengal, for safe custody, in their joint names. A Memorandum of the Treasury Notes should be appended to the Bank's account.

XXVI. Interest on the Treasury Notes will be drawn by the Deputy Auditor and Inspector General of Police every half-year, and the amount carried to the credit of the Fund in the Bank's accounts.

XXVII. Upon the allotment of a pension, the usual note or Certificate will be issued by Government, upon which the Collector will pay the amount, charging it to "Advances Re-payable," and forwarding the payee's receipt to the Inspector General of Police, who will prepare a monthly Abstract of the pensions, and transmit it, together with a Memorandum of the amounts disbursed by each Officer, to the Auditor General through the Deputy Auditor of Bengal, for concentration and adjustment of all the payments in the accounts of the Bank of Bengal.

XXVIII. Upon the receipt of the Pension Abstract, the Secretary to the Bank of Bengal will remit the amounts to the several disbursing Officers by transfer receipts, and debit the charge in his account under the head of Police Superannuation Fund, supporting it with the Pension Abstract and the receipts.

XXIX. The Collector will credit the amount of the transfer receipts to "Advances Re-payable" by debit *per contra* in his Cash Account in the usual manner.

XXX. As soon after the close of each year as possible an Abstract Account shewing the receipts and expenditure of the Fund, and the nature of the vested securities, will be published in the *Calcutta Gazette* for the information of the Police.

General Police Fund.

XXXI. The General Police Fund will be composed of all sums received for Extra or Special Police under Sections 13, 14, and 15, all sums received on account of Municipal Police furnished by the Force, and all sums realized under Section 41, of Act V. of 1861.

Special Police.

XXXII. No special Guard shall be supplied to private persons without the authority of the Magistrate of the District, who shall at once report to the Commissioner the circumstances under which he sanctions any such Guard. Before such Guards are furnished, the District Superintendent must require the deposit of a sum of money sufficient to defray their cost: provided that if such Guards are required for any period in excess of one month, the deposit of one month's pay in advance will suffice.

XXXIII. All Cities, Towns, or Unions, in which Act XX. of 1856 is in force, shall defray so much of the cost of the Police allotted to them as shall be determined on by the Inspector General in communication with the Magistrate of the District, the balance being met from the Police assignment. The Magistrates of Districts must be careful to provide adequately for this demand upon their Municipal Funds. The Municipal Fund of a City, Town, or Union, will, under no circumstances, contribute more towards the General Police Fund than is actually paid for the Police employed within its limits, and the amount contributed shall not ordinarily exceed what would be sufficient for the Watch and Ward contemplated by Act XX., 1856. The surplus will, as hitherto, be employed for Conservancy and other Municipal purposes. If in any City, Town, or Union, a majority of the rate-payers object to the abolition of the old Watch and Ward, the new Police shall not be substituted for the Municipal Chowkeydars except under the special orders of Government. Care must be taken that, when Municipal Police are employed out of the City, Town, or Union, for which they are appointed under Act XX. of 1856, they shall not be paid out of the rates levied under the said Act, for that City, Town, or Union.

XXXIV. All payments on account of Municipal Police must be made to the District Superintendent or Head Officer of Police in the District within fifteen days from the close of the month for which the pay is due.

XXXV. A similar course in every respect must be followed in regard to payments from Bazar and Cantonment Funds for the Police employed in Military Bazars or Cantonments.

XXXVI. When Police are supplied to any Public Department or Office for duties not coming within the scope of ordinary Police duties proper, the District Superintendent shall charge to such Department the actual pay of the grades furnished, with an additional charge of 10 per cent. on the amount of the Bill towards the expense of European supervision, cost of Arms and Accoutrements, Clothing, &c. The same rule will be observed in regard to the pay of special Guards supplied to private persons.

XXXVII. Bills for the cost of Police supplied to any Public Department or Office will be presented to the Head of the Office employing them at the end of every month, and such Bills shall be paid in cash on or before the 10th of the ensuing month.

XXXVIII. The whole number of Police employed and paid, and their cost, will be shewn in the monthly Police Abstracts, and the sums to be received from the different Departments will be deducted from the Abstract, the balance only being drawn from the Treasury.

XXXIX. Cash payments are essential as a check upon Departments employing Police; no Bill for Police supplied, though passed by the Head of an Office, will therefore be accepted as a voucher for a charge. The Police Abstract, though exhibiting the whole number of the Police employed on every description of duty during the month, will only be passed for the fixed amount allotted by Government; cash receipts being shewn for all additional Police supplied to other Departments.

Jail Guards.

XL. The strength of permanent Jail Guards will be determined by the Inspector General of Police in communication with the Inspector General of Jails and Officers in charge of Jails.

XLI. The Guard will be hereafter furnished from the Police Force by the District Superintendent, to whom payment of the cost thereof will be made by the Magistrate or other Officer in charge of the Jail, on or before the 10th of each month, for the month preceding.

XLII. Officers in charge of Jails having been specially authorized to draw advances from the Treasury to meet this and other Jail charges, subject to adjustment by audited bills, will have no excuse for deferred payment, and the District Superintendent will report to the Deputy Inspector General all instances in which delay may occur.

XLIII. The District Superintendent, before distributing pay to the Police forming the Jail Guard, will make the deductions on account of contribution to the Police Superannuation Fund, and will credit the same in the accounts of that Fund.

XLIV. The District Superintendent will include the pay of the Jail Guard in the Pay Abstract of the Police Force belonging to his District, the object being to keep in view the entire strength of the Police Force attached to each District; but, before submitting the Abstract for audit, he will deduct from the total amount thereof, the sum received from the Officer in charge of the Jail on account of the permanent Guard.

XLV. Whenever extra or special Guards are required on occasions of emergency, such as the escort of Prisoners under transportation, the Officer in charge of the Jail will indent for such special Police party, in the form prescribed by the Inspector General of Police, paying in cash the cost of the Police thus furnished.

Treasury Guards.

XLVI. No Departmental payment will be made by the Revenue Department for permanent Treasury Guards; the Guards will be furnished by the Police Reserve, each Treasury being debited in account with the cost of its own Guards.

XLVII. Wherever the new Constabulary is sufficiently organized, the duty of serving processes will be made over to them: all fees levied on this account and all rewards and forfeitures of the natures described in Section 41 of Act V. of 1861 will be transmitted weekly by the Magistrate to the Collector, who will place all sums received on this account to the credit of the General Police Fund. A weekly account of all such deposits will be furnished by the District Magistrate to the District Superintendent.

Guards over Prisoners under trial.

XLVIII. The duty of escorting offenders under trial from the Jail to the Magistrate's Court, and of guarding them whilst there, will henceforth devolve upon the Police. Whenever the trial of a person, who is detained pending the result of such trial, shall for any reason be adjourned, a day shall be fixed by the Magistrate for the re-hearing of the case, and it will be the duty of the District Superintendent to ensure the punctual attendance of the Prisoner on the day fixed. By these means the inconvenience and unnecessary labor imposed upon the Police of conveying day by day to the Magistrate's Court a number of Prisoners whose attendance is not required will be avoided.

Other Guards.

XLIX. With the exception of the Thannah Police, River Police, and Treasury Guards, no part of the Force can be charged against the Police assignment. Funds for the payment of all other Guards, Special Escorts, Local Police, &c., must be altogether provided by the Department to which they are furnished.

L. The District Superintendent will keep an account of all payments which he may receive on account of the General Police Fund under the separate heads, Cantonment Police, Municipal Police, Permanent Jail Guards, Temporary Guards, Escorts, Special Police, &c.

Pay Abstracts.

LI. The Pay Abstract, as noted above, will include the pay of the whole permanent Force, whether chargeable to Special Departments or the Police assignment. The Collector will give an advance of the pay of the permanent Force, which will be adjusted, as regards the former, from the deposits made by the District Superintendent, and, as regards the latter, by the audited Pay Bill.

LII. Temporary Special Police will not be included in the Pay Abstract, but will be paid at once in cash by the Superintendent, the accounts being audited by the Inspector General. The surplus, after payment of salaries, will be deposited with the Collector to the credit of the General Police Fund.

LIII. The General Police Fund is absolutely the property of Government, and is applicable solely to the maintenance of the Police Force and to no other purpose.

LIV. The Inspector General will, in communication with the Deputy Auditor and Accountant General to the Government of Bengal, draw up a simple form of account to be kept by the District Superintendent, shewing all sums received and expended on account of Police, and all deposits made by other Departments in the Collector's Treasury on account of Police. Monthly accounts must be furnished by each District Superintendent to the Deputy Inspector General, and quarterly accounts must be furnished by the Deputy Inspector General to the Inspector General, who again will furnish half-yearly accounts to Government.

Accounts.

LV. No deposits shall, on any account, remain in the hands of District Superintendents beyond the day, or the day following that, on which they are paid These Officers will deposit all such sums with the Collector.

LVI. The general duties of the Police are detailed in Sections 23, 25, 30, and 31 of Act V. of 1861. Detailed instructions as to the manner in which those duties are to be performed will be issued by the Inspector General.

General duties.

LVII. The Inspector General must take care that men are not unnecessarily withdrawn from their proper duties of Police to act as Writers, &c. He will accordingly fix the Establishment of each Deputy Inspector, District Superintendent, and Assistant in charge of a District at once. No other Officers require Office Establishment. Great care should be taken that unpaid apprentices are not allowed by the subordinate Officers of the Police to hang about the Stations and Out-stations.

Establishments.

LVIII. The distribution of the Force of a District should, as far as possible, be so arranged that not more than twenty to twenty-five written Reports should have to be disposed of by a District Superintendent during the day. No District Superintendent ought to spend more than two hours a day at his desk in examining Reports and passing orders upon them; but this duty he must regularly perform, wherever he may be, whether in a Station or in Camp.

LIX. Every Officer of the Police, above the Grade of Police Inspector, and below that of Deputy Inspector-General, is expected, within one year from date of appointment, to pass an examination in Act V. of 1861, and in Chapters 4, 5, 6, 7, 8, and 9, Act XXI. of 1861, which define the mode of procedure in matters cognizable by the Police.

Examinations.

LX. Every such Officer as above is also expected, if not previously so qualified, to pass within twelve months from the date of his appointment by the First Standard in the Oordoo or Bengalee language, and six months afterwards by the First Standard in the second language. He is required, within two years from the date of his appointment, to pass by the Second Standard in both the Bengalee and Oordoo languages.

LXI. In the event of any Officer failing to pass the last-mentioned test within the prescribed period, an additional six months will be allowed him, as a special case, if he is reported by his official superior to be efficient in other respects, but otherwise his services will be dispensed with.

LXII. The Inspector General will prescribe the Books and Registers which will have to be kept by District Officers and at each Police Station. The following will suffice at first for Police Stations :—

Books and Registers.

1. Register of charges taken.
2. Ditto ditto refused.
3. Ditto of property stolen and recovered.
4. Unclaimed property found.
5. Absconded criminals and escaped offenders living or having connection within Station Circle.
6. Register of Convicts released on expiry of sentence, and notorious bad characters.
7. Register of unnatural deaths reported.
8. Ditto of Villages forming Constables' beats in the Circle, with the names of the Constables.
9. Village Chowkeydars within the Circle.
10. Station Diary Book.
11. Inspection Report Book.
12. Station Order Book.
13. Conduct Book.

LXIII. Too great importance cannot be attached to the Diaries. Copies of Diaries will be regularly submitted from each Station to the District Superintendent, and for each Superintendent to the Inspector General : these Journals must never be allowed to be a day in arrear ; they should be a concise, but at the same time a complete, record of all that has been brought during the day under the notice of the compiling Officer. The Station Diary will comprise an abstract of all Out-station Diaries, and the District Diary will contain an abstract of all worthy of note in all the Station Diaries and Reports received during the day. Special Reports should be avoided as much as possible.

LXIV. The Inspector General will lose no time in drawing up a set of periodical Returns and Statements to be submitted to him by his Subordinates.

Periodical Returns.

LXV. Commissioners of Divisions will continue to submit to Government, as heretofore, the Annual Police Reports of their Divisions.

LXVI. The Inspector General will submit to Government an Annual Report shewing the administration of his Department in all those Districts in which Act V. of 1861 is, or may be, in force. The materials for this Report will be obtained from the Reports of his Subordinates.

LXVII. The Inspector General must exercise great discretion in the issue of Circular Orders. No Circular should be issued unless it has been ascertained that directions upon some particular point are actually required. Circulars founded upon isolated cases, or to meet contingencies which may never arise, should be avoided. The Inspector General will submit to Government two copies of each Circular issued by him to his Subordinates.

ORDERED, that a copy of this Resolution be forwarded to the Inspector General for information and guidance and for communication to his Subordinates, to all Commissioners of Divisions, to all Magistrates of Districts, to the Civil Pay Master, and to the Deputy Auditor and Accountant General of Bengal.

Ordered also, that a copy be sent to the Secretary to the Government of India, Home Department, for information.

Ordered also, that the Resolution be published in the *Gazette*.

(Sd.) A. EDEN,
Offg. Secretary to the Government of Bengal.

Annexure A.

Statement of Receipts and Charges on account of the Police Superannuation Fund for the Month of

DISTRICTS.	Deductions from Pay Abstracts.	Savings.	Fines on Police Officers.	Fines by Magistrates.	Sale of Clothing, &c.	Total.
	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.
Balance as per last Statement	.....	.....	.....	.....	.....	000 0 0
Hooghly	00 0 0	00 0 0	00 0 0	00 0 0	00 0 0	00 0 0
Patna	00 0 0	00 0 0	00 0 0	00 0 0	00 0 0	00 0 0
Moorshedabad	00 0 0	00 0 0	00 0 0	00 0 0	00 0 0	00 0 0
	00 0 0	00 0 0	00 0 0	00 0 0	00 0 0	000 0 0
Interest on Treasury Notes		...	...	...	..	00 0 0
Amount of Treasury Notes paid off		...	...	...	...	000 0 0
		Total	...	...	...	000 0 0
Deduct charges:—						
Pensions paid as per Abstract		...	...	...	00 0 0	
Amount invested in Treasury Notes		...	...	...	00 0 0	
						000 0 0
			Balance	...	...	000 0 0

Annexure B.

FORM OF CERTIFICATE.

The 186 .

No.

CERTIFIED that the Deputy Auditor and Accountant-General, Bengal, and Inspector General of Police, Lower Provinces, are entitled to receive a Treasury Note for Rupees

to bear interest at the rate of five per cent. per annum from interest to be paid *vide* Orders of Government, Financial Deparment, dated 17th February 1862, and that the amount has been debited in the accounts of the Bank of Bengal to Police Superannuation Fund, and credited to Treasury Notes Police Fund.

Rupees

The following Rules have been issued by the Inspector General of Police, Bengal, with the sanction of that Government.

FIRST INFORMATION REPORT.

I. Section 139 of the Criminal Procedure clearly directs that "every complaint of information preferred to an Officer in charge of a Police Station shall be reduced into writing," and this is quite independent of the after-order directing the substance of the complaint to be entered in the Diary. The Form given in Appendix No. I. is to be used in future in all Districts.

II. One copy of the form will be sent to the District Superintendent, another copy to the Officer in charge of the Sub-District. By these Officers they will be submitted to the Magistrate of the District, and the Magistrate having jurisdiction respectively, who will return them after seeing them. One of the copies will again be sent to the Magistrate trying the case, with the final report, and will be filed with the papers of the case. The other copy will be filed in the Superintendent's office.

III. When the Magistrate of the District or the Magistrate in charge of a Sub-District is absent from his Head Quarters or Sudder Station, this report will be sent to him by the District Superintendent or Officer in charge of Sub-District through the Police Officer of highest rank in attendance at the Court of such Magistrate.

IV. Every *cognizable* case reported to the Police, no matter whether it afterwards turns out a false charge or not, whether it be a heinous offence or a petty one, is to be reported in the above form. If a Magistrate directs a *cognizable* case to be investigated by the Police, and the Police Officer has not received any previous information regarding the crime, and has not already sent in these forms, he shall, on receipt of the Magistrate's order, do so.

V. The first part of the form is to be filled in by the Officer in charge of the Police Station, and the second part should be *verbatim* the report brought to the Police Station.

VI. These reports should be numbered consecutively in each Police Station monthly. The first report received at the Police Station (no matter when the crime occurred) after 12* o'clock on the morning of the first day of the month should be number 1, and the last report received before 12*

* Midnight is apparently meant in both instances.—*Ed.*

o'clock on the night of the last day of the month, the last number. Great care should be taken in filling in the date and hour in the first column.

VII. In the second column should be entered not only the name of the person who actually brings the information to the Police, but names of other parties concerned, such as " Chowkeedar A. B. sent by C. D. Gomashta, of E—poor village, to report a dacoity in the house of F. G. ;" or when the investigation is ordered by a Magistrate, the entry should be " Deputy Magistrate A. B., on the petition of C. D., regarding the illegal confinement of E. F."

VIII. In the third column, a short history of the case, as reported by the informant, should be entered. The Police Officer receiving the charge should enter the Section under which he receives the charge, that is to say, under which he proceeds to make the enquiry ; it will very often happen that after enquiry the case will be proved to be very different to that reported ; Police Officers should not be blamed for these discrepancies.

IX. Special pains should be taken to impress on Police Officers in charge of Stations that in every case in which property has been stolen, the amount stolen should be mentioned ; of course, it will very often happen that the informant is not posssessed of this information, in such cases the entry should be " informant does not know the amount of property stolen ;" or, " informant says *about* —— Rupees' worth of property has been stolen." In all such cases, in the first Special Diary of the case that is sent, the exact amount of property said to have been stolen should be entered.

X. The date of occurrence should always, if possible, be ascertained and given ; the informant may not be able to give this information, in such cases it should be given in the Special Diary. or if it is impossible to give the exact date, an approximate date should be given, thus—" Deceased was for the last time seen alive on the 5th, and his body was not found till the 8th ;" or, " the complainant left his home on the 10th, and on his return, on the 13th, found he had been robbed."

XI. The place of occurrence of the crime should be clearly given, to enable the District Superintendent, or the Magistrate having jurisdiction, if it is necessary for them to do so, to proceed to the spot at once.

XII. In the last column should merely be given the name and designation of the Officers sent to investigate, and any other important steps taken *before* proceeding to investigate, such as, " information sent to the neighbouring Stations of A., B., and C."

XIII. The first part should always be signed by the Officer in charge of the Station at the time of the receipt of the information, no matter what his rank may be.

XIV. The second part should be *verbatim* the story told by the informant. If the complaint is given in writing, the original paper should be attached to the form, and the second part not written. This part should always be signed by the person giving the information.

XV. When information is received regarding the commission of any of the following seven descriptions of crimes, these reports should be sent at once, and by the quickest possible means of conveyance, and not kept till the regular dâk is despatched :—

1.—Murder.

2.—Dacoity.

3.—Serious Affrays and Illegal Assemblies likely to lead to serious riots.

4.—Theft, Highway Robbery, House-breaking, &c., in which Rs. 300 or upwards is stolen.

5.—All cases in which Europeans are charged with any crime.

6.—All cases in which Police Officers are accused of heinous crimes.

7.—Counterfeiting Government Stamps or Coins.

XVI. The Form (No. 1) should be kept at the Police Stations and not at the Out-posts; information given at Out-posts should be communicated at once to the Officer in charge of the Police Station, and the report should be sent by him. All first informations must be signed by the Officer in charge of Police Stations.*

XVII. The number of persons supposed to be concerned in each case, and the number charged with the offence, should always be given; it is not necessary in this return to give all their names, it will be quite enough to say A., B., and so many others.

XVIII. The practice of cancelling reports should be avoided; that is to say, if the first information of a crime is sent in a report, and half an hour after the despatch of the report it is found that the information was entirely false, the number should be left, and the next case reported in the next consecutive number.

XIX. Vague rumours of crime *said* to have been committed, should not be reported in this Form, but should be mentioned in the Station Diary; as soon as any authentic information is collected, report No. 1 should be at once sent in.

CHARGE SHEET OF ACCUSED SENT UP FOR TRIAL—*Form A.*

I. Before giving any special directions as to how this Form should be filled up, it is necessary to show clearly how all cognizable cases are to be reported.

1*st.*—All cases in which the accused are sent up for trial, and all cases in which the accused have absconded, and the case is substantiated against them, are to be reported in Form A.

2*nd.*—All cases in which the accused are not sent up for trial before a Magistrate, whether they have been arrested and released on bail or recognizance by the Police, or whether no arrest has taken place, and whether the crime is ascertained to have been committed or not, are to be reported in Form B.

3*rd.*—All cases in which no one is accused and the Police fail to obtain any clue, whether the crime is ascertained to have been committed or not, are to be reported in Form C.

II. Except in cases not cognizable by the Police, a Police Officer in charge of a Station must send the final report of every charge made to him against any particular person in either Form A. or B., and those in which no one is accused, in Form C.

* District Superintendents can use their discretion in permitting this form to be kept and used at any Police Out-post when, from distance from the Sub-Divisional Station or other cause, such a course may be considered advisable.

III. The charges which should be entered then in Form A. are :—

Firstly.—All cases cognizable by the Police in which particular persons have been charged, in which arrests have been made, and the accused sent before a Magistrate.

Secondly.—All such cases which the Police believe to be true, and in which the offenders have evaded arrest or absconded after arrest.

IV. It will often happen that on a serious charge being made to a Police Officer, he immediately arrests the accused, but subsequently discovers that there is no foundation for the complaint, or that it is so much exaggerated, that the offence which has been really committed proves not cognizable, and he releases the accused on bail. This charge, though false, or exaggerated, must be entered in Form B., because the charge has not been proved against the accused.

V. It need scarcely be added that Police Officers should be instructed that frequent instances of such hasty and unnecessary arrests will seriously affect their reputation, and, indeed, the character of the general Police Force of a District. The efficiency or inefficiency of the Police Force, in this respect, will be clearly shewn in the new Monthly Return of Crimes, where, if the Police have been acting without judgment and due care, the number of persons arrested will contrast unfavourably with the number of persons convicted.

VI. A Police Officer may, however, consider a charge against a person named well founded, and yet not make an arrest.

VII. By Section 137 of Act XXV. of 1861, a discretionary power is given in this respect. According to that Section, if a Police Officer shall not consider the immediate apprehension of the accused necessary for the ends of justice, he shall abstain from proceeding in the case, and report the substance of the complaint or information, and ask for orders, and act accordingly. But the case must finally be reported in A., B., or C. Form, according to circumstances.

VIII. The fact that the accused, from his position or standing, is not likely to attempt to escape, is one of the circumstances which will lead a Police Officer to think that his immediate apprehension is not necessary for the ends of justice.

IX. Another is that the offence is not likely to be immediately repeated, or to lead to any other offence being committed.

X. For instance, a wealthy Zemindar may be accused of having harboured an offender charged with an offence punishable with any term of imprisonment over 1 and under 10 years. Here, though the Police Officer may consider the charge proved, and though he has the power to arrest, he may not consider the immediate apprehension of the accused necessary. He reports the substance of such charge for the information of his superior Officer, and it will depend entirely on the orders of the superior Officer what action he takes afterwards, and in what Form his final report will be sent in.

XI. Section 136 merely does away with the necessity for a *local* enquiry in certain cases. Section 135 lays down a general rule that, upon complaint or information of a cognizable offence, a Police Officer shall *proceed to the spot* (where the offence occurred) and there hold an enquiry. But when a complaint is not of a serious nature, and is made against a person by name, there may be no occasion for a local enquiry. The accused is known,

and the witnesses are known. The Police Officer may, therefore, summon the witnesses to the Station-house and there hold his enquiry. If he still finds that a local enquiry is not necessary, he issues his order for the arrest of the accused (supposing the offence to be proved), and sends him up for trial there and then. In short, Section 136 authorizes an enquiry at a Station-house, and does not give authority to reject a charge.

XII. The Section under which the Police Officer exercises this discretionary power should be entered in the last column of the "first information" report, or in the Special Diary, according to circumstances.

XIII. There are many cases preferred at Police Stations in which charges which are not cognizable by the Police are so interwoven with charges that are cognizable, that nothing less than a judicial enquiry can satisfactorily determine which part is true and which part is false. If, however, the Police Officer who makes the enquiry, considers that part of the charge which is cognizable well founded, he should send the accused up for trial, and report it in A. Form. But on the other hand, if he considers the cognizable part of the charge as not proved, and the non-cognizable part as proved, he will refrain from arresting the accused, and report the case in B. Form.

XIV. For instance, if a charge of Highway Robbery is made against a person, and on investigation it is proved that an assault was committed, and there be no proof of the Robbery, the case will be reported in Form B., as the cognizable case which the Police Officer went to investigate is false; with regard to the assault, either the Magistrate may, if he think proper, summon the accused, or the aggrieved person can make his complaint before a Magistrate.

XV. As regards the proper manner of filling up Form A., the following instructions are issued. In column No. 1 must be entered the number of the charge.

XVI. Charges should be numbered with reference to the order in which they have been made during the year, that is, the first charge accepted in any year should be entered as No. 1, and so on consecutively, until the entry of the last charge accepted during that year which closes the series.

XVII. The first accepted charge of the next year again commences No. 1; care of course must be taken that the same number entered in that portion of the Form which is sent to the Magistrate is also noted in the counterfoil of the Form retained at the Police Station.

XVIII. The importance of numbering cases carefully will be apparent when it is considered that it is by the number that any case will be afterwards identified in any other form. As for instance, in a case of Theft or Burglary, a charge marked No. 1, A. Form, will be entered No. 1 in Register of Property Stolen and Recovered.

XIX. Or, if the offenders accused in Form A., No. 2, have absconded before the Police could apprehend them, or have escaped after sentence, then the case would be entered in Form V., Register of Absconded Criminals and Escaped Offenders, as case No. 2.

XX. Any mistake, therefore, in the entry of the charge in the first instance in Form A. will lead to confusion in all the subsequent entries in other Forms.

XXI. In the second column should be entered the number of the first information of the case; the month should also be given as "No 1 of January," or "No. 7 of February."

XXII. In the third column of the Form should be entered the date and hour when the charge was first made at the Police Station, and the name of the person who made the charge. It must be clearly understood that it is the name of the person who *first* brings the charge to the notice of the Police that should be entered here, and that such person need not necessarily be the Prosecutor, or in any way interested in the case. In many instances, the village Chowkeedar or the servant of the Zemindar is the informant.

XXIII. In column 4, the name, address, and occupation of the person making the charge is entered. The necessity of names of persons charging being fully and carefully given is too obvious to need remark.

XXIV. The same observation applies to the entry of address and occupation, as it is very often by these latter entries that persons of similar names can be distinguished from each other.

XXV. In column 5, the names of the witnesses and their address will be entered, that is to say, the names of the witnesses from whom recognizances have been taken to appear before the Magistrate, and not of all the witnesses examined by the Police during investigation.

XXVI. In many cases complainants mention the names of about 20 or 30 people as witnesses; it will be the duty of the Police Officer who forwards the charge to enquire into complainant's statements, as regards his witnesses, to make a distinction between those who have actually witnessed the offence or who in any way can give important testimony, and those who can give merely hearsay evidence. Police Officers very often bind over 6 or 7 witnesses to appear before the Magistrate and give evidence on a point where 2 or 3 would be amply sufficient as regards, for instance, indentification of stolen property or weapons found.

XXVII. In column 6, the charge is to be entered. This should be done clearly and fully, but without any needless reiteration, and the Section of the Penal Code under which the charge comes should be given. It will show that the Officer fully comprehends the exact nature of the charge preferred.

XXVIII. It must be clearly understood that the charge the Police Officer considers to have been established before him must be entered in this column; it will very often happen that the charge originally made by the complainant is not the same as that established before the Police. A case reported to the Police as a Dacoity may, on investigation, turn out one of House-breaking; the latter crime will be entered in this column.

XXIX. The hour at which accused was arrested, and the name of the Officer who made the arrest, will appear in column 7; under Section 152 a Police Officer cannot under any circumstances detain an accused person longer than 24 hours. This limit of time, however, counts from the hour in which the accused was taken into custody by the Police, and has no reference to the time such accused person may have been in custody of others, as, for instance, in those cases where an offender has been arrested by the village Chowkeeder or the injured person. Officers in charge of Districts cannot exercise too close a supervision over Police Officers with regard to their strict adherence to Section 152.

XXX. If the offence reported in Form A. is one against property, and property of any kind has been found, the person on whom such property was found, with the name of the finder, should be distinctly specified in column 8. All these particulars may have an important influence on the ultimate

issue of the case; any facts discovered at the outset in a case will naturally have great weight with the Magistrate, as they are less likely to be the result of collusion of parties, or suborning of witnesses, than circumstances which may come to light afterwards.

XXXI. These remarks apply with equal force to entries in column 9, where the name and description of any weapon that may have been used should be clearly specified.

XXXII. In column 10 will be entered the names of all the persons charged by the complainant with having committed the offence.

XXXIII. In column 11 will be entered the names of the persons sent up for trial in custody of the Police; and in column 12 the names of persons who are released in bailable offences, and required to appear before a Magistrate.

XXXIV. In those cases where the Police release a person on bail, and in which they consider the charge well founded, it is necessary that a certain day should be mentioned for the accused's appearance before the Magistrate, under Section 157.

XXXV. In column 13, the signature of the Officer who has taken the charge should be inserted or attached.

XXXVI. The two last columns are left blank, to be filled up by the Magistrate when the case is disposed off.

XXXVII. On the receipt of the memo.* directed in Chapter No. of Part — to be furnished by Court Inspectors, the last two lines on the counterfoil should be written up.

XXXVIII. Police Officers must be careful not to give in Form A. reasons for accepting charges.

XXXIX. This Form (A.) should not be sent in until the *completion of the enquiry*, and should be transmitted by the readiest and quickest means of communication. It should be addressed to the Police Officer in charge of the Sudder Station, or Sub-District, or Officer acting on their behalf, and not to the Court Inspector, as it is believed has been the practice in some Districts.

XL. The Police Officer in charge should send these reports at once to the Court Inspector, who will lose no time in bringing the case to the notice of the Magistrate.

XLI. This Form, as well as Forms B. and C., will be kept in the Magistrate's Office with the records of the case, and will not be returned to District Superintendent or Sub-District Officer.

* A memo. to be sent by the Court Inspector or Sub-Inspector to the Officer in charge of the Police Station, informing him of the result of the trial, and forwarding copy of any remarks the Magistrate who tried the case may have made regarding the Police investigation.

FINAL REPORT OF CHARGES IN WHICH ACCUSED ARE NOT SENT UP FOR TRIAL.—*Form B.*

I. In Form B. should be entered those charges which are cognizable by the Police, and in which some particular person is charged with having been concerned, but which the Officer to whom the charge in preferred does not consider true, or not sufficiently proved to warrant his sending the accused before a Magistrate, whether the accused has been arrested and released on bail or recognizance, or whether no arrest has taken place.

II. It is necessary to explain that offences reported at Police Stations, that are not cognizable by the Police, are not entered in this Form. A charge may be so palpably false on the face of it, that a Police Officer may consider himself justified in immediately rejecting it, in which case he enters it in Form B.

III. Or, after making enquiries into the charge, the Police Officer may come to the opinion that it is false ; in this case also he enters it in Form B.

IV. Reference has already been made, in Chapter 2, to charges preferred to the Police, in which complaints that are cognizable are mixed up with complaints that are not.

V. If the Police Officer, to whom such charge is preferred, is of opinion that the cognizable part of such charge is not well founded, he should decline to act on it, and enter it in Form B.

VI. No very detailed directions are required concerning the manner in which this Form should be filled up. The instructions given regarding the filling in of the first four columns of Form A. apply equally to Form B. In column 5, the charges investigated by the Police should be entered fully and clearly. If it is an offence punishable by the Penal Code, the Section under which it is punishable should be mentioned ; if not, the Special Act or Regulation.

VII. In column 6 will be entered the amount of property stolen in true cases, that is to say, the amount reported by complainant as having been stolen, and not the amount reported by the Police after enquiry to have been stolen, *unless such is specially* sanctioned by the Magistrate.

VIII. In column 7 will be entered the names of the accused who have not been arrested, and in 8 those who have been arrested and released on bail or recognizances. The total of these two will show the number charged.

IX. It must be noted that the difference between the bail and recognizance bonds, taken from persons released and reported in Form B., and those released and reported in Form A., is that the former are to appear when called upon, and the latter on a fixed day. Police Officers must bear in mind that no person who has been apprehended shall be discharged except on bail or on his own recognizance, or under the special order of a Magistrate (*see* Section 160, C. P.), and that only a Magistrate can release a person from his engagement, whether such engagement be in the form of a bail or recognizance. Information on this point will be conveyed to Officers in charge of Police Stations by Court Inspectors, and it will be the duty of the former to enter the Magistrate's orders* on the counterfoil.

X. In column 10, the Officer who investigated the case will state clearly and concisely whether, in his opinion, the case is a true one or not, that is to say, whether the *crime* really occurred or not.

XI. The charge made against a person may be entirely false, yet the case true. A. and B., charged with the murder of C., may be perfectly innocent, yet the murder may have been committed.

XII. In the last column a statement of the charge should be given in full, in order to prevent the accumulation of papers ; this statment should be continued on the back of the form, not on a separate sheet, unless absolutely necessary.

XIII. If the Police Officer has acted correctly in not sending the accused for trial, it will be both his interest and duty to give a full statement of

* See note to para. 37 of Chapter II.

all the circumstances connected with it, as it is from this statement the Magisterial Officer will be enabled to judge whether he has acted properly or not.

XIV. In cases when the Police consider the charge unfounded, and report it in Form B., but in which the Magistrate may consider that the Police have acted erroneously, that in fact the charge is well founded, and should have been reported in Form A., he will, in all probability, order a fresh enquiry. The Police are bound to enter into such enquiry with as little delay as possible.

XV. If, on the completion of such enquiry, the Police Officer sees reasons to consider the charge well founded, he will report it in Form A. If not, he will simply report that he still considers the charge, after re-investigation, untrue. There is no necessity for sending a second report in Form B. If the Magistrate does not order any re-investigation, but directs the accused to be sent before him for trial, Form A. will be sent with the accused.

XVI. Whenever any page of the book containing Forms A., B, or C., is rendered unfit for use by careless writing, blots, mistakes, or erasures, it should be sent into the District Superintendent, who will write the word "cancelled" across the page in red ink, and append his signature.

XVII. On the receipt of a Charge Sheet in Form A., the Sub-District Police Officer must at once submit the same to the Magistrate having jurisdiction, and any changes or alterations that are necessary must be made by the Magistrate and not by the Sub-District Officer.

XVIII. But on the receipt of a Final Report of a case in B. or C. Form, the Sub-District Police Officer may, if he thinks the investigating Officer has acted hastily or improperly, return the Form and direct a re-investigation, or depute another Officer to make a fresh enquiry.

FINAL REPORT OF CASES IN WHICH NO ONE IS CHARGED.—*Form C.*

1. In Form C., the final report will be submitted of all cases reported to the Police which are cognizable, and in which no particular person is charged by the complainant with having committed the offence, or the Police fail, after enquiry, to discover the perpetrators.

2. It must be clearly understood that this (as well as Forms A. and B.) is the *final* report of the case, so that it is only when the investigation has been completed, and no one has been up to that time charged with the crime, that this Form will have to be submitted.

3. On first reporting a case, the complainant may say he suspects no one, and afterwards make a charge against some particular person: in such a case the final report will be in either A. or B. Form

4. If no one is named by the complainant, but the Police, from information received by them, arrest any one, the final report will be in an A. or B. Form, according to the circumstances of the case; but the fact of the Police merely suspecting any one must not be considered the same thing as a charge made by the complainant against that person.

5. The columns in this Form, with one exception, are exactly the same as in B. Form, and the instructions as to how they are to be filled in, apply equally to the one as to the other.

6. The exception is the column in B. Form, in which the names and addresses of accused persons are inserted; this column is altogether omitted in C. Form for obvious reasons.

7. Particular attention is drawn to the last two columns. In the last but one, the Police Officer who sends in the Form must clearly state whether *in his opinion* the crime was really committed, or whether the case is a false one.

8. If a non-cognizable crime is proved to have been committed, and not the cognizable offence, the Police Officer who makes the enquiry into the offence will say so clearly, and in as few words as possible, in column 8.

9. In the last column, a clear history of the case will be given. It is from this report that the Magistrate will generally form his opinion as to the action taken by the Police; when this portion of the report is properly written, there will be no necessity for the Magistrate to see the Special Diaries of the case.

10. If there is not sufficient room in this column, the report will be carried over to the back of the sheet, and, if necessary, continued on a separate piece of paper.

11. On the receipt from the Court Inspector of the Memo. directed to be furnished in Chapter ——* of Part ———, the Magistrate's final order will be entered in the counterfoil of the book at the Police Station.

12. If, after sending in the final report of a case in B. or C. Forms, the Police obtain a clue to the parties who committed the offence, their having sent in the "final report" will not prevent their immediately proceeding to make a fresh enquiry; and if on the second enquiry the accused is sent up for trial, A. Form will have to be submitted; but *if no one is arrested,* no further report in either B. or C. Forms will have to be made.

13. A Magistrate directing an enquiry to be made by the Police under Section 133, Code of Criminal Procedure, regarding a case which is not cognizable by the Police, shall, in the first instance, send his order to the Sub-District Officer, and not to the Officer in charge of the Police Station direct.

14. The Sub-District Officer will forward, with his endorsement, the Magistrate's order to the Officer he wishes to make the enquiry; this Officer will then proceed in the same manner as he would with a cognizable case, except in the following two particulars:—

1*st.*—He shall not send in a first information report.

2*nd.*—He shall not arrest the accused without a warrant.

15. A report of the case under Section 180, Code of Criminal Procedure, will be sent by the investigating Officer to the Sub-District Police Officer, and he will forward it at once to the Magistrate who ordered the investigation.

16. The Magistrate's order to make an enquiry into a non-cognizable case does not give the Police the power of arresting the accused for an offence for which the law says he shall not arrest without a warrant.

17. If, on the receipt of the report, the Magistrate should issue a warrant or summons against the accused, the Police Officer will report the case in A. Form, and send the same papers and forms as he would in a cognizable case.

18. But if the Magistrate does not issue either a warrant or summons, the case will be reported in either B. or C. Forms, according as a charge is or is not made against any one by name.

19. The final report of every case investigated by the Police, whether cognizable or not, must be sent in one or other of the three final report forms, and the counterfoil, which should contain a *precis* of all the particulars noted in the sheet, should be filed among the Station Books.

* See note to para. 47 of Chapter II., page 421.

20. Non-cognizable cases will not be entered in any of the books kept at Sub-District or District Head-Quarters, and shall not be entered in any of the returns furnished by Sub-District Officers or District Superintendent.

The first information of a cognizable crime reported at _____ *Police Station,* _____ *Sub-District* _____ *District, under Section* 139 *of the Criminal Procedure Code.*

Date and hour of receipt at Police Station of first information.	Name of informant and parties concerned.	Crime reported, amount stolen, &c.	Date of occurrence of the crime.	Place of occurrence, direction and distance from Police Station.	Steps taken by Officer in charge of Station.

No.

In charge of _____ *Police Station.*

Date of Despatch. _____

COMPLAINANT OR INFORMANT'S STATEMENT.

BENGAL POLICE_____ DISTRICT.

A. FORM.

Charge Sheet of a case reported at _____ *Police Station, dated the* _____ *of* _____ 186 .

No. of Charge

Date of Charge Sheet

No. of first information

Date of first information

Complainant

Witnesses

Crime established before Police

Name of arresting Officer

List of property found

Weapons or instruments found

Persons charged

Persons forwarded under custody

Persons admitted to bail

Crime established before Magistrate

Result of trial

Signature of Officer taking the charge

No. of charge.	No. of first information.	Date and hour complained at Station, and by whom.	Name and address of complainant or person charging.	Name and address of witnesses.	Charge established before the Police.	Date, hour, and by whom taken into custody.	Property found on person and elsewhere, and by whom.	Weapons or instruments found connected with the crime.	ACCUSED PERSONS.			Signature of Police Officer taking the charges.	Crime established before Magistrate, and how disposed of on trial.	Remarks by Magistrate.
									Named by Complaint.	Sent up in custody.	Sent up on bail for trial.			
1.	2.	3.	4.	5	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.

BENGAL POLICE_____DISTRICT.

No,

Date

No. of first information

How and by whom reported

Name of complainant or informant

Crime

Amount of property stolen

Accused not arrested

Accused, arrested, and released

Crime true or not

Signature of investigating Police Officer

Magistrate's final orders

B. FORM.

Final Report of a case reported at_____Police Station, in which the charge against the accused was not sufficiently proved to warrant their being sent up for trial.

Date and No. of Final Report.	No. of first information of the case.	How and by whom brought to Station.	Complainant or informant's name and address.	Charge or complaint.	Amount of property ascertained to have been stolen.	Name and address of accused persons.		Signature of Officer who investigated the case.	Whether the crime after investigation was ascertained to have been committed or not.	Course adopted by the Police, and reasons for not sending the accused before the Magistrate for trial.
						Not arrested.	Arrested and released.			
1.	2.	3.	4.	5.	6.	7.	8	9.	10.	11.

BENGAL POLICE. DISTRICT.

No.

Date

No. of first information

How and by whom reported

Name of complainant or informant

Crime

Amount of property stolen

Crime true or not

Signature of investigating Police Officer

Final order of the Magistrate

C. FORM.

Final Report of a case reported at _____ _____ Police Station, in which no one was charged with the crime, and no clue obtained by the Police.

Date and No.	No. of first information of the case.	How and by whom brought to Station.	Complainant or informant's name and address.	Charge or complaint.	Amount of property ascertained to have been stolen.	Signature of Officer who investigated the case.	Whether the crime after investigation was ascertained to have been committed or not.	Course adopted by the Police, reason of failure or grounds for believing the charge a false one.
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